

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 6, 2001. The following Board Members were present: Chairman John DiGiulian, Nancy Gibb, Paul Hammack, James Hart, Robert Kelley, and James Pammel. John Ribble was absent from the meeting.

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

Page 001, November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00, 3/27/01) (Def. Dec. from 7/31/01, 8/14/01, and 10/16/01).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle Rosati replied that it was and that this case was before the Board for decision only.

William Mayland, Staff Coordinator, stated that there was nothing new to add to the previous hearings and that new development conditions had been distributed to the Board the prior week.

Mr. Pammel stated that the special permit application was specifically for the location of a cellular tower on the church property, as well as an accessory structure. He said that there had not been any proposed changes to the church operation as it existed, but that the application had come to the BZA because the church was already under a special permit.

Mr. Pammel said that this application had been previously reviewed by the Planning Commission and the Board of Supervisors under a special exception application and had been approved by both of them. He stated that the only reason it came to be heard by the BZA was due to the location of the cell tower, since that was an accessory facility that had been added to the physical plant of the church and its operation.

Mr. Pammel stated that he wanted to clarify that any health concerns in this case could not legally affect its outcome. He said that a review of the documents, standards, and criteria under which this application had been scrutinized demonstrated that the case had come under laws previously issued by the Federal Government. Mr. Pammel read to the audience a portion of the Federal Government statement: "...with respect to personal wireless services, a cellular facility is categorically excluded if the total effective radiated power, ERP, of all channels operated by the licensee at a site is 1,000 watts or less." He stated that it had been clearly submitted in the material that the applicant had been in the range of a maximum of 350-500 watts.

Mr. Pammel stated that although he was not completely happy with the location of the structure, he would let the action of the Planning Commission and the Board of Supervisors guide his decision and assist in making his motion. He said that it was the BZA that was responsible to the community and to the needs of the community overall and that they had determined that the facility in that location was necessary.

Mr. Pammel moved to approve special permit application SPA 83-D-022-2 for the reasons noted in the Resolution.

Mr. Hart spoke in detail about the difficult issues presented within the case over the past year. He said that the vast amount of paperwork that had been submitted had been a lot to absorb. He stated that he would have preferred the tower at the originally discussed site, but would support the motion.

Mr. Hammack stated that he basically agreed with Mr. Pammel and Mr. Hart; however, he spoke in detail about why he opposed the motion. He said he was concerned with land use issues and that the church's expansion plans with the addition of the tower would negatively affect the harmony of the neighborhood and impact the neighboring homes.

Mr. Kelley stated that he agreed with Mr. Hammack and that the location of the tower was wrong for the neighborhood. He said he felt the tower was needed, but not in that location.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83- D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00, 3/27/01) (Def. Dec. from 7/31/01, 8/14/01, and 10/16/01). 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 6, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed standards for the granting of a special permit.
3. The applicant would operate the facility within the Federal Government allowable standards of radiated power (ERP).
4. The applicant has met the standards of the Planning Commission and the Board of Supervisors.

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, 1089 Liberty Meeting Court (8.11 acres), and is not transferable to other land.
2. This Special Permit Amendment is granted only for the purpose(s), structures and/or uses(s) indicated on the special permit plat titled "Special Exception Application/Special Permit Application Site Plan Dranesville - CWS Site 14", prepared by C.D. Meekins & Associates, Inc. and dated September 20, 2000, as revised through May 30, 2001, and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance. Other by-right, Special Exception uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. The maximum daily enrollment for the nursery school and child care programs, including the Mother's Day Out program, shall not exceed 90 children.
- 6. The nine existing paved parking spaces located on the lot line at the northeast corner of the site shall be deleted. The asphalt shall be removed and that portion revegetated.
- 7. A minimum of seventy-four (74) parking spaces shall be provided in Phase 1. The remainder of the 174 parking spaces shall be provided when the sanctuary is constructed. All parking shall be on site. As shown on the special exception/special permit plat.
- 8. The hours of operation for the nursery school and child care center, including the Mother's Day Out program, shall be limited to Monday-Friday, 6:30 a.m. to 6:30 p.m.
- 9. Transitional screening requirements shall be modified and barrier requirements shall be waived along the northern and southern lot lines. Existing vegetation shall be preserved and maintained along these lot lines and shall satisfy the requirements of Transitional Screening 1.

The applicant shall accurately delineate the boundaries of the cemetery and shall work with the Urban Forestry Division to determine the extent to which Transitional Screening 1 can be provided from the cemetery's southern boundary to the northern lot line and between the proposed western parking areas and the dwelling on Tax Map 6-4 ((14)) 3. Prior to issuance of a Non-RUP for the telecommunication facility, the applicant shall install Transitional Screening 1 along the eastern portion of the cemetery to screen the dwelling on Tax Maps 6-4 ((1)) 69A and 69B from the proposed Phase III addition to the church and along the western portion of the site to screen the dwellings on Tax Maps 6-4 ((14)) 2 and 3 from the telecommunication equipment building. The transitional screening plantings shall include large evergreen trees with an ultimate height of 40 feet and a minimum height of 10-12 feet tall at the time of planting and medium evergreen trees with an ultimate height of 20-40 feet and a minimum of 6-8 feet tall at the time of planting. The minimum height of the trees at the time of planting shall apply only to the landscaping to be installed prior to issuance of a Non-RUP for the telecommunication facility. The exact number, size and species of landscaping materials shall be determined by the Urban Forestry Division.

- 10. The stormwater management facility shall be constructed with as little clearing and grading as possible. Final location shall be determined by DPWES at the time of site plan review.
- 11. A second stormwater management facility may be located in the southwest portion of the site to collect runoff from the proposed driveway. If this second stormwater management facility is not needed, then the area in the southwest portion of the site shall be part of the proposed future subdivision, and an amendment to this Special Permit shall not be required for this to occur.
- 12. The applicant shall construct the proposed driveway and discontinue use of the existing driveway prior to issuance of the Non-Residential Use Permit for Phase 1.
- 13. Right-of-way to 45 feet from the existing centerline of Sugarland Road necessary for the future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on the demand from Virginia Department of Transportation or at the time of site plan approval whichever occurs first. Ancillary easements shall be provided to fifteen (15) feet behind the new right-of-way line. An eastbound left turn land on Sugarland Road into the site in Phase 1 and right turn deceleration shall be provided, as determined by the Director of DPWES.
- 14. The following area shall be tree save areas in which existing trees shall be preserved, except for dead and dying trees: 1) the eastern portion of the site labeled "possible tree save area" on the plat, 2) the

area in the western portion of the site outside the limits of clearing and grading after the location of the stormwater management facility has been determined and; 3) the mature stand of trees west of the cemetery and east of the telecommunication facility located in the conservation easement. No further clearing and grading shall be permitted except the minimum amount necessary for the development shown on the plat. The tree save area shall be protected by tree protection fencing in the form of four (4) foot high, 14-gauge welded wire, attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Prominent signs shall be placed on the fencing "TREE SAVE AREA - DO NOT DISTURB" to prevent construction from encroaching on these areas. The tree protection fencing shall be made clearly visible to all construction personnel, and shall be installed immediately after root pruning has taken place and prior to any clearing and grading activities on the site, including the installation of the telecommunication tower. The installation of tree protection fencing shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading or demolition activities, the Applicant's certified arborist shall verify in writing that the tree protection fencing has been properly installed.

15. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly onto the subject property.
  - Shields shall be installed if necessary, to prevent the light from projecting beyond the facility.
16. The existing dwelling may be used for church related uses or for a dwelling for ministers or caretakers of the church, or as an equipment building for the telecommunication facility. If the existing dwelling is utilized as an equipment building for the telecommunication facility the building shall be limited to the storage of telecommunication and carillon equipment only.
17. If a speaker system is utilized to broadcast the sound of bells, the system must comply with the noise regulation of Chapter 108 of the Code of Virginia. The playing of music shall be prohibited between the hours of 6 P.M. and 7:00 A.M.
18. Prior to issuance of a Non-RUP for the existing residential dwelling unit to be used for the storage of the telecommunication and carillon equipment, the building shall meet all applicable County, State and Federal building, structural and fire codes regulations as determined by DPWES. Access to the building shall be permitted only from within the fenced area located to the east of the building. The interior of the building shall be designed to include a wall that will prohibit access from the doors and windows located on the western façade of the building. The equipment building doors located on the eastern façade, within the fenced area, shall be locked at all times. The gate for the fence shall be locked at all times. The telecommunication equipment shall be located within secured metal cabinets or enclosures inside the equipment building and shall be locked at all times. The equipment cabinets may be unlocked only to perform maintenance and only in the presence of a maintenance worker. Signs shall be posted on the individual equipment cabinets, the doors to the equipment building and the fence that clearly states that they shall be locked at all times.

These development conditions incorporate and supersede all previous development conditions and shall be implemented with the first phase, unless otherwise noted.

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

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

Page ~~005~~ November 6, 2001, (Tape 1), TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-2, continued from Page 004

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. Kelley and Mr. Hammack voted against the motion and Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 14, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page ~~005~~ November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. STEVEN R. & ANNA M. SHOEMAKER, VC 01-V-133 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 18.2 ft. Located at 8535 Innisfree Dr. on approx. 8,925 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((21)) 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. Jim Garner Agent, Patio Enclosures, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicants sought a variance to permit construction of a sunroom addition to be located 5.0 feet from the side lot line to bring the side yards total to 18.2 feet. Mr. Bernal said that the minimum side yard requirement was 8 feet, with a total side yard of 20 feet; therefore, the applicants requested variances of 3 feet for the sunroom addition and 1.8 feet for the total side yard requirement.

Mr. Garner presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot had an unusual shape. He said that due to the configuration of the inside of the house and the placement of the HVAC system on the outside of the house, the sunroom could not be placed in any other location.

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

Mr. Hammack moved to approve VC 01-V-133 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN R. & ANNA M. SHOEMAKER, VC 01-V-133 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 18.2 ft. Located at 8535 Innisfree Dr. on approx. 8,925 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((21)) 21. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed standards for the granting of a variance.

3. The irregular shape of the property does not allow any other place to build upon.
4. The addition will be in character with the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of addition as shown on the plat prepared by George M. O'Quinn, dated, August 1, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

Page 007 November 6, 2001, (Tape 1), STEVEN R. & ANNA M. SHOEMAKER, VC 01-V-133, continued from Page 006

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 007 November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHARLES R. & NANCY H. SMITH, VC 01-B-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.8 ft. from side lot line such that side yards total 21.7 ft. Located at 8804 Stark Rd. on approx. 13,083 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 245.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy and Charles Rufus Smith, 8804 Stark Road, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicants sought a variance to permit construction of a garage addition to be located 4.8 feet from the side lot line, which would make the side yards total 21.7 feet. He said that the minimum side yard requirement was 8 feet, with a total side yard minimum of 24 feet; therefore, a variance of 3.2 feet for the garage addition and a variance of 2.3 feet for the total side yards were requested.

Mr. Bernal stated that there had been two errors in the Staff Report. He stated that the property was located in the Braddock District and not the Mount Vernon District, and that the chart on Page One should state 'garage addition,' not 'sunroom addition.'

Mrs. Smith presented the variance request as outlined in the statement of justification submitted with the application. She stated that they had lived in her home since 1965 and had made various modifications over the years, but never needed a variance. She stated that they would like to construct a two-car garage and provide some private living space for her sister. Mrs. Smith said that her neighbors had written a letter stating they had no objections to the application. She said that the addition would be compatible with the house and the neighborhood.

Mr. Hart stated that the Board had received an anonymous letter with complaints about the property and asked if Mrs. Smith had seen it. Mrs. Smith replied that she had seen it that morning.

Mr. Hart asked Mrs. Smith to clarify whether they proposed to have one or two stories with the garage. Mrs. Smith stated that they currently had a two-car carport that they would like to enclose, and then build a room above for her sister. She stated that they would not be covering any property that was not currently covered.

Mr. Hart and Mr. Hammack had a brief discussion regarding the plat which showed the garage to be 13 feet high, and did not see an indication that there was enough space to live in above the garage. Mr. Hart asked Mrs. Smith to clarify the height and space usage.

The builder (no name given) came forward to speak. He stated that the garage extended out beyond the second floor living space. He explained that the living space above the portion of the garage would extend only to the existing house, and that the garage would protrude approximately 9 feet beyond the front of the house.

Mr. Hart asked Susan Langdon, Chief, Special Permit and Variance Branch, if the specifications on the plat were understandable. She stated that the plat showed a 13 foot height and asked the builder if that would be sufficient in order to obtain a building permit.

The builder stated that the architectural plans showed that the addition would be 16 feet high. He clarified that the existing house was 28 feet high and the addition would be 26 feet high at the peak.

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

Mr. Hart moved to approve VC 01-B-136 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES R. & NANCY H. SMITH, VC 01-B-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.8 ft. from side lot line such that side yards total 21.7 ft. Located at 8804 Stark Rd. on approx. 13,083 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 245. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed standards for the granting of a variance.
3. The testimony and photographs indicate that the garage would be in character with the neighborhood.
4. The footprint is the same as the existing carport.
5. There have been many similar variances granted in the neighborhood.

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

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



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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by R. C. Fields, Jr., dated, June 25, 2001, as revised through July 19, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding what is shown on the plat, the height of the addition may be up to 26 feet, and shall consist of a garage and bedroom.
5. The addition shall consist of a garage and bedroom.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 009, November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHRISTOPHER J. AND KAREN S. CAMPBELL, VC 01-S-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. and eave 2.0 ft. from front lot line. Located at 12524 Chronical Dr. on approx. 39,840 sq. ft. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((2)) 19. (continued from 10/9/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mr. Hammack disclosed that he had recently found out the attorney he shared office space with had assisted one of the opponents to this case and, therefore, recused himself from the hearing.

Mavis Stanfield, Staff Coordinator, stated that she did not have anything new to add to this case and said that a memorandum along with a new plat had been distributed to the Board for their review.

Ms. Strobel stated that the application had been heard on October 9, 2001, and at the conclusion of that hearing the applicants had been asked to research certain issues and to reconsider their proposal. She said that the applicants took the suggestion very seriously and had made appropriate changes to relocate and modify their proposed building footprint.

Ms. Strobel stated that the applicants worked with their architect and engineer as they redesigned the home. She said that the building footprint had been reduced and certain amenities eliminated. She said that the current proposal was a less desirable layout for the applicants, but they felt it was important to make the changes to address concerns that had been raised at the prior hearing. She said the proposed house would now be located 20 feet from the ingress/egress easement and 40 feet from the pavement, substantially reducing the variance requested. Ms. Strobel stated that there had been several technical issues at the last hearing. She said those issues included the potential of additional recorded restrictions on the property and previous subdivision plats that had been recorded.

Ms. Strobel stated that she had reviewed a title insurance policy prepared for the applicants in conjunction with their construction loan. She said a copy of that letter had been distributed to the Board the prior week to allow them to review those findings.

Ms. Strobel summarized restrictions that had been placed on the subject property when the original subdivision plat was recorded. She said that the enlarged copy of the subdivision plat made by the engineer did not reveal any further restrictions. She noted that the engineer had enlarged the note on the 1945 plat because everyone had some difficulty reading it at the last hearing. She said it demonstrated that it had been a surveyor's certificate.

Ms. Strobel stated that she had found there was an additional restriction placed on the property with the initial Deed of Conveyance. She said that the initial Deed of Conveyance identified three additional conditions, including that a structure not be erected closer than 50 feet from the front line or 20 feet from any side line. She stated that the original Deed of Conveyance was recorded many years prior to the recordation of the subdivision of the adjacent property that had created Chronicle Drive.

Ms. Strobel stated that Chronicle Drive was an ingress/egress easement and not a dedicated roadway, and it did not subdivide the subject property. She said that the front line continued to be Summit Drive and that the applicant's proposal placed the house approximately 86 feet from Summit Drive. She said that it did not create any additional restrictions on the applicants and that they had complied with the new proposed plat.

Ms. Strobel stated that one of the other issues at the last hearing was the discussion of how low the County Assessment had been for the subject property. She said that the property had been purchased at fair market value, in excess of \$130,000. She said the applicants had retained a construction loan on the property from the bank and a trust had been recorded in excess of \$300,000. She stated that a bank would not loan such a sum without an appraisal of the value of the property.

Ms. Strobel said that the application did meet all the standards for a variance. She said the applicants purchased the property in good faith, they did an independent investigation prior to the purchase, and they pursued a grading plan with Fairfax County that had been approved. She said the applicants became aware of the problem when the grading plan was presented to zoning and a building permit could not be issued. The zoning issue was one that had been based on an Ordinance interpretation and not something that was regularly reviewed in the preparation of grading plans.

Ms. Strobel stated that there were unique circumstances associated with the property, which included the fact that the original subdivision had been recorded in 1945, prior to adoption of the current Ordinance and prior to the current R-1 standards. She said the subject property was slightly less than one acre and Chronicle Drive did bisect the property, and that a large portion of the property south of Chronicle Drive was encumbered by a flood plain easement.

Ms. Strobel stated that the applicants' proposal would not be a detriment to the adjacent community. She said the variance that had been requested was adjacent to Chronicle Drive, and that it was against an ingress/egress easement. She said that Chronicle Drive was paved to a width between 14 feet and 25 feet, was not a public ingress/egress, and only served 7 lots.

Ms. Strobel stated that the neighborhood houses had been constructed throughout the years at various times. She said the houses showed a variety of styles and sizes, and the applicant did not believe that this proposal would be contradictory to the existing neighborhood character.

Page 011, November 6, 2001, (Tape 1), CHRISTOPHER J. AND KAREN S. CAMPBELL, VC 01-S-124, continued from Page 010

Chairman DiGiulian called for speakers in support or opposition to the application.

Margaret Wooddall, 12500 Chronicle Drive, came forward to speak in opposition to the application. She said that she had submitted a letter to the Board regarding her grievances, but wanted to reiterate her concerns with the setback and the siting of the house as proposed.

Bill Glover of Chronicle Drive came forward to speak in opposition to the application. He stated he had been a builder most of his life and that it had been evident to him that a major portion of the lot was a flood plain and he would have never bought that particular property. He stated that the applicant's engineer made an error in his report by not realizing that the property was a corner lot. He stated he believed that the purchasers created their own hardship.

Tom Brod, owner of Lot 18, came forward to speak in opposition to the application. He stated he was concerned that the applicants would be allowed to build a home on what appeared to be a half acre lot in a one-acre subdivision.

Karen Shaffer, 5223 Summit Drive, came forward to speak in opposition to the application. She stated she shared the same concerns as the two previous speakers. She said that the proposed home would be in the middle of three streets and was concerned about the safety aspect.

Ms. Strobel stated in her rebuttal that the applicants purchased the property in good faith, understanding that the lot had been properly subdivided, had an access easement which divided the lot, and that a portion of the subject property was encumbered by a flood plain. She said they believed the subject property to be a buildable lot.

Mr. Pammel asked Ms. Strobel if the variance was denied, would the applicants be able to build on that property without a variance. She replied that it would be minimal, but they could build on the lot.

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

Ms. Gibb made a disclosure that one of the speakers, Mr. Glover, was a builder who had built an addition on her own home. She said if she were going to oppose the motion she would recuse herself, but she was going to support the motion and felt that her former business relationship with him would not influence her decision.

Mr. Pammel stated that the opposition to this application had been concerned that the subject property was only one half acre. He said he wanted the record to show that the lot consisted of 39,840 square feet, which was slightly less than one acre. He stated that the applicants owned the easements, and did meet the lot requirements in question.

Mr. Hart spoke in support of the applicants. He said that they were not getting everything they wanted, but they had revised their plat and made the necessary changes.

Ms. Gibb moved to approve VC 01-S-124 for the reasons as noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER J. AND KAREN S. CAMPBELL, VC 01-S-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. and eave 2.0 ft. **(THE BZA APPROVED ADDITION 20 FEET FROM FRONT LOT LINE)** from front lot line. Located at 12524 Chronical Dr. on approx. 39,840 sq. ft. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((2)) 19. (continued from 10/9/01). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2001; and

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

1. The applicants are the owners of the land.
2. The property was part of a subdivision created in 1945.
3. There was a second subdivision created adjacent to this lot in later years causing some of the land use problems.
4. There was an access easement created through this lot for the second subdivision.
5. The applicants acquired the property in good faith.
6. The applicants had hired an engineer who made mistakes in his report.

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

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

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

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

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

1. This variance is approved for the location of a dwelling and eave, shown on the plat prepared by Paul B. Johnson, dated May, 2001, as revised through October 22, 2001, submitted with this application and is not transferable to other land.

Page 013 November 6, 2001, (Tape 1), CHRISTOPHER J. AND KAREN S. CAMPBELL, VC 01-S-124, continued from Page 012

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack recused himself and Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 013 November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M.        GEORGE F. & CYNTHIA L. MOHRMANN, VC 01-L-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 7.0 ft. from side lot line. Located at 4405 Eaton Pl. on approx. 11,475 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((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. Cynthia Mohrmann, 4405 Eaton Place, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicants sought approval of a variance to replace an existing deck located 7 feet from the side lot line on a triangular shaped lot. She said the Zoning Ordinance required a minimum side yard of 12 feet; therefore a variance of 5 feet was requested.

Ms. Mohrmann presented the variance request as outlined in the statement of justification submitted with the application. She stated that she and her husband had purchased their home in 1992 and had been unaware that the original builder had constructed the deck against the zoning laws of the County and had not applied for variance at that time. She said that the deck had deteriorated over the years, and in getting estimates to replace it, one of the builders told her of the building error. Ms. Mohrmann stated that the current location was the only area accessible for a deck.

Mr. Hammack asked if the new deck would be larger than the existing deck. Ms. Mohrmann stated that the only change would be the addition of steps on the interior of the lot.

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

Mr. Kelley moved to approve VC 01-L-138 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE F. & CYNTHIA L. MOHRMANN, VC 01-L-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 7.0 ft. from side lot line. Located at 4405 Eaton Pl. on approx. 11,475 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((38)) 19. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

Page 014, November 6, 2001, (Tape 1), GEORGE F. & CYNTHIA L. MOHRMANN, VC 01-L-138,  
continued from Page 013

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed standards for the granting of a variance.
3. The existing deck had been built by error in the same location by the previous owner.

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

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

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

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

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

1. This variance is approved for the location of a deck, shown on the plat prepared by Rice Associates, dated April 17, 1992, as revised through April 23, 1992, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Page 015, November 6, 2001, (Tape 1), GEORGE F. & CYNTHIA L. MOHRMANN, VC 01-L-138, continued from Page 014

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 015, November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M.           ROBIN M. AND JONATHAN HUDGINS, VC 01-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 14.0 ft. from one side lot line and 12.5 ft. from other side lot line. Located at 9229 Hooes Rd. on approx. 13,651 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 2. (Def. from 10/9/01).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicants sought a variance for the approval of a dwelling to remain 14 feet from one side lot line and 12.5 feet from the other side lot line. She said the Zoning Ordinance required a minimum side yard of 20 feet; therefore, variances of 6 feet and 7.6 feet were requested.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that this lot had been part of the John Leary subdivision that was created and platted in 1937 and the lots were deemed legal lots of record.

Ms. Strobel stated that the lot was long and narrow with two front yards. She said that a house had been built on the property in 1933 and an addition had been constructed in 1962. She said that prior to the construction of the addition, there had been an agreement recorded in the land records which said that the agreement allowed construction of the addition closer to the side lot line than had been permitted by the Zoning Ordinance. She said that it was noted that this agreement would be valid as long as the two adjacent lots were owned by one individual, and it appeared to be a self granted variance.

Ms. Strobel stated that there had been a lot of discussion about whether this should be a variance or a special permit to allow for error in building location as the improvements currently exist. She said it was decided that the special permit provisions would not be applicable in this case because the parties intended to construct the home in violation of the Ordinance. She said that through the recorded agreement, it was believed that the land agreement was legal, and a building permit had been issued.

Ms. Strobel stated that the variance would allow the existing home to remain in its present location.

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

Mr. Hammack moved to approve VC 01-V-021 for the reasons noted in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBIN M. AND JONATHAN HUDGINS, VC 01-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 14.0 ft. from one side lot line and 12.5 ft. from other side lot line. Located at 9229 Hooes Rd. on approx. 13,651 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 2. (Def. from 10/9/01). 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 6, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed standards for the granting of a variance.
3. The noted agreement in the Fairfax County Land Records created extraordinary conditions for this 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.



Page 017, November 6, 2001, (Tape 1), ROBIN M. AND JONATHAN HUDGINS, VC 01-V-121, continued from Page 016

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

1. This variance is approved for the location of a dwelling, shown on the plat prepared by Charles E. Powell, dated December, 2000, as revised through July 19, 2001, 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. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 017, November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M.        MICHAEL BROWN, SP 01-Y-049 Appl. under Sect(s). 8-913 of the Zoning Ordinance to allow reduction to minimum yard requirements for R-C lots to permit construction of addition 26.7 ft. from front lot line. Located at 15463 Waters Creek Dr. on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (6) 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. Michael Brown, 15463 Waters Creek Drive, Centreville, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. She stated that the applicant sought approval to permit construction of a covered porch to be located 26.7 feet from the front lot line. She said the Zoning Ordinance required a minimum front yard of 40 feet; therefore, a variance of 13.3 feet had been requested.

Mr. Brown presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Brown stated that he and his wife purchased the property in 1991 and that the current covered porch was deteriorating due to poor maintenance and age. He stated that they would like to replace the existing porch and extend it by adding a three-quarter Farmers Porch. He said that his neighbors were supportive and depending on the outcome of the hearing, some of them would like to do the same to their own homes.

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

Mr. Pammel moved to approve SP 01-Y-049 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL BROWN, SP 01-Y-049 Appl. under Sect(s). 8-913 of the Zoning Ordinance to allow reduction to minimum yard requirements for R-C lots to permit construction of addition 26.7 ft. from front lot line. Located at 15463 Waters Creek Dr. on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (6) 33. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 11, 2001; 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 applicants presented testimony indicating compliance with the prescribed standards for the granting of a variance.

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 conditions:

1. This Special Permit is approved for the location of the covered porch addition shown on the plat prepared by Charles P. Johnson and Associates, dated June 7, 2001, as revised through August 6, 2001, 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 14, 2001.

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Page 018, November 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83-P-057-4 Appl. under Sect(s) 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a church and related facilities to permit building additions, increase in seating, site modifications and change in development conditions. Located at 8526 Amanda Pl. on approx. 12.38 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Moved from 12/19/00, 1/30/01, 3/6/01, and 10/2/01)

This case was administratively moved to December 18, 2001, at 9:00 a.m., per the applicant's request.

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Mr. Hart moved that the Board recess for an Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys that pertained to actual and probable litigation and to other specific legal matters that required the provision of legal advice by counsel pursuant to Virginia Code 2.1-344, A, Subsection 7. He stated that the case for litigation was the Dry Clean Depot.

Mr. Pammel seconded the motion which carried with a 6-0 vote. Mr. Ribble was absent from the meeting.

The Board recessed at 10:25 a.m. and reconvened at 12:00 p.m.

Mr. Hart made a motion to reconvene the Board Meeting. He stated that under the requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard or discussed by the Board during the Executive Session. He said those matters specifically were the cases of Stikas vs. Board of Zoning Appeals, Record Number 010367 in the Supreme Court of Virginia and Lievan vs. Gwinn, Record Number 010371 in the Supreme Court of Virginia.

Mr. Pammel seconded the motion which carried with a 6-0 vote. Mr. Ribble was absent from the meeting.

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9:30 A.M. GREGORY GRANAHAN, A 2001-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services to approve Site Plan 000497-SP-01-2 which does not include provisions for a travel lane connection from the property located at Tax Map 99-1 ((1)) 4 and 5D to the appellant's property located at Tax Map 99-1 ((1)) 5C. Located on the E. side of Backlick Rd. at its intersection with Newington Rd. on approx. 2.11 ac. of land zoned C-8. Mt. Vernon District. Tax Map 99-1 ((1)) 4 and 5D.

Mr. Hart made a disclosure that Mark Jenkins, who was listed on the affidavit as the Agent for the appellant, had represented two clients that had been in opposition to Mr. Hart's clients in a recent case. He said that the clients had resolved their issues and he felt he could participate without bias in this case.

Bruce Nassimbeni, Director of Environment and Facilities, Review Division stated that he would speak for the County in this case. He clarified that the proffers, part of Attachment 3, had been incomplete and the whole package was distributed to the Board today. Mr. Nassimbeni stated that at issue was an appeal of Site Plan 0497-SP-01-2, Hunters Plaza, Phase 1. He said the appellant challenged the fact that the Site Plan failed to provide a travel lane connection from the subject property to the Granahan property. Mr. Nassimbeni stated that the appellant owned parcel 5C and was an adjoining property owner to the subject property located at 8105 Loisdale Road. He said that it was the position of the Director that the Site Plan for Hunters Plaza, Phase 1 had been properly submitted and approved in accordance with all applicable site plan regulations and County policies. He stated that Section 17201 allowed the Director to waive or modify the requirement for any improvement stated. Within Sect.17-201 of the Zoning Ordinance, the Director could make a determination if improvements were unnecessary or whether the waiver would adversely affect other improvements or be in compliance with other applicable requirements based on information provided by the applicant at that time.

Mr. Nassimbeni stated that, as part of the review and processing of the site plan, a waiver for the construction of a travel lane to the adjoining property was submitted. He said the applicant had submitted documentation to justify the waiver of the travel lane, which had been reviewed and deemed appropriate due to various issues. He said that the subject property met the specific requirements of Paragraph 3, Section 17201, which indicated that there had not been any travel lane connections to the Granahan property, which was a vacant parcel. Mr. Nassimbeni stated that on the justification provided, in addition to being in compliance with requirements of Par. 3, Sect. 17-201, the request to waive the inter-parcel access had been approved.

Mr. Nassimbeni stated that the Comprehensive Plan recommended that the two remaining undeveloped properties that bordered Hunter Plaza have access from existing Terminal Road. He said that the cul-de-sac of Terminal Road extended and had been built to serve the two properties specifically. He said the publicly

funded Terminal Road cul-de-sac extension was constructed in the 1990's as recommended by the Comprehensive Plan. He said it was built to prevent traffic from these properties from accessing Loisdale Road and the Fairfax County Parkway due to safety concerns at that high volume intersection.

Mr. Nassimbeni stated that the provisions of a travel lane to either the Granahan property, parcel 5C, or parcel 5E, would not be in substantial conformance with the rezoning, generalized development plan, proffers, or special exception plat. He said that the proffers related to Hunter Plaza connection at Terminal Road had not been intended to permit a travel lane connection to parcel 5C or 5E through Hunters Plaza. He said it had been intended only to serve as a backdoor for the Hunter Plaza site to ease traffic at the Loisdale entrance should such an access become available in the future by the owners. He stated that it was not the intention of the proffers to allow more traffic to access the Hunter Plaza/Loisdale Road entrance.

Mr. Nassimbeni stated that based on all pertinent information, the Director properly waived the requirements to provide a travel lane and interparcel access to the adjoining properties. He said this was done in addition to reviewing and approving the subject plan in accordance with normal procedures.

Mr. Nassimbeni stated in conclusion, that it had been the Directors position that the site plan had been properly submitted, reviewed, and approved in accordance with the provisions that had been established in the Planning Ordinance. He said it had been the Directors decision to approve the subject plan and believed it should be upheld.

Mr. Hart asked for clarification on the Special Exception plat regarding the intricacies of some of the small roads and interchanges. Mr. Nassimbeni stated that the area in question was part of Phase 2 of the subject development, and the Granahan property was south of that area.

Mr. Hart questioned whether there had been anything in the Special Exception approval or proffers for the fast food and filling station area that required interparcel access to the Granahan property. Angela Rodehaver, Department of Transportation, replied that it had not been contained in the conditions. She stated that in Proffer 7, which was the proffer that dealt with the interparcel to Terminal Road, the Proffer showed that it was egress only, and it addressed the future by indicating the need for traffic studies in that area. She said that staff had been concerned with the Hunter Plaza development at the zoning stage because of its proximity to Loisdale and the Fairfax County Parkway intersection. Ms. Rodehaver stated that the amount of traffic that could potentially use that entrance continued to be a big concern. She stated that Proffer 7 did acknowledge that a study needed to be done for that area, and depending on what the study showed, Proffer 7 discussed alternatives for access and the interparcel connection.

Mr. Hart clarified that neither the rezoning nor the Special Exception required an interparcel connection. Ms. Rodehaver replied that was correct.

Mark Jenkins, Agent, stated that Mr. Nassimbeni, in his presentation, had made declarative statements that an interparcel connection had not been required. He said that Ms. Rodehaver said that Proffer 7 provided for connection to Terminal Road, between the Loisdale entrance or extension.

Mr. Jenkins stated that the Board of Supervisors, in the rezoning, rezoned that property and provided specifically that the Loisdale entrance would remain open under all circumstances, including its connection to Terminal Road. He said that it would be regulated, but it would remain open. He said that Proffer 7 had given a series of possibilities for the future that could include full ingress and egress, and other options. Mr. Jenkins stated that various options were in the legislative act of the rezoning by the Board of Supervisors. He said that the waiver by the Director permanently prevented any use of that by the Granahan property, even though other members of the public would have been given those same rights.

Mr. Jenkins stated that the specific language of the Ordinance used by staff was from Sec.17-201. He said that it was really Sect. 17-201.3, because that had been specifically referred to in granting the waiver and was where the actual justification for the waiver relied.

Mr. Jenkins stated that a site plan generally allowed for interparcel connections to be provided. He said there was a policy that provided ingress to and from the adjacent properties and that site plans were mostly applicable to commercial and retail properties, and to some multi-family residential properties.

Mr. Jenkins stated that there were three standards that would justify a waiver. He said that the first standard did not show any existing or proposed vehicular traffic abutting the subject property and the adjoining property was zoned for single family detached dwellings, which does not pertain. He said the Granahan property was zoned C-8, and was also within the Comprehensive Plan designation that grouped it together with the subject property for a local serving retail use.

Mr. Jenkins stated he felt that those two factors should be read together and therefore could not pertain. He said the final standard was that the adjoining property had been occupied by given use, which by its nature, would suggest that there would be a limited desire for travel between such use and the one proposed.

Mr. Jenkins stated that in his interpretation, the adjacent property must already have a use on it that would make it incompatible with the interparcel connection. He stated that the Granahan parcel had no such use as it was vacant. He said that the staff report stated that since the Granahan property was vacant, that was a justifiable argument to not have an interparcel connection

Mr. Jenkins stated that he wanted to reiterate that the Comprehensive Plan grouped the Granahan property together with the Hunter property as primarily planned for local serving retail use. He stated that there was an industrial option for the Granahan property, but the area was primarily planned for local serving retail use. He stated that this was critically important because it showed that the Board had decided that the properties should be treated similarly, and that had not occurred in this case.

Mr. Jenkins stated that one of the major points in this case was what use Granahan will have in the future. He said he found it inappropriate to waive for all time any interparcel connection when the use of the Granahan property remains unknown. Mr. Jenkins said that if Mr. Granahan wanted to use the property for a local serving retail use, consistent with the zoning and the Comprehensive Plan, there would be no reason why it would be treated differently from the Hunter property. He stated that the waiver violated the intention of the Comprehensive Plan.

Mr. Jenkins stated that Proffer 7 was an example of what the Board contemplated would happen if the Hunter Property, which does not have access to Terminal Road, obtained access in the future. He said the Proffer didn't eliminate the Loisdale entrance, but it indicated that the properties would be oriented to Terminal Road. He said that the BOS had stated that the Loisdale Road entrance would remain open under Proffer 7. Mr. Jenkins stated that he believed the BOS decided that in the future there would be a minimum right-turn-out and right-turn-in at Loisdale.

Mr. Jenkins stated that the waiver by the County expressly excluded the Granahan property and its users. He stated that Ordinance 17201 stated there had not been justification for the waiver. He said a waiver should be considered when there has been time and opportunity to present evidence, traffic studies, and other available information to determine whether they would be able to comply with the standards. Mr. Jenkins stated he also believed that there had been overwhelming evidence in the rezoning that Proffer 7 plainly manifested the intent that there would be an interparcel connection.

Ms. Gibb asked Mr. Nassimbeni to explain, under Sect. 17-201.C.3, about the adjoining property's use. He replied that the appellant's property was not currently occupied by any given use and that was one reason why it was decided to waive the travel lane.

Mr. Nassimbeni stated that the waiver met Condition Number 1, that there was no existing proposed vehicular travel lanes abutting the subject property on either side. He said that Condition Number 2 stated that the adjoining property would be used or zoned for single family detached dwellings, which it was not. He said Condition Number 3 was met because the appellant's property was presently not occupied.

Ms. Gibb clarified that the Director may waive the requirement for constructing a travel lane when the adjoining property was occupied by a given use. She stated further that when property was zoned commercial and the owner had not built on the property yet, the Department of Transportation (DOT) or even a neighbor could waive a travel lane.

Mr. Nassimbeni replied that was correct, but there were other conditions that DOT took into consideration. He stated that in the opening paragraphs of Sect. 17-201, it talked about all requirements under 17201, not just the service drive.

Mr. Nassimbeni stated that the specific proffer language overrode anything on an approved Development Plan. He said the specific proffer language indicated that the applicants would provide egress only and he believed that would supersede Note 18 in the Development Plan for both ingress and egress.

Mr. Nassimbeni stated that it was the intent of Proffer 7 to take traffic away from the heavily traveled intersection, and send the traffic back out through Terminal Road. He said that the Loisdale/Fairfax County Parkway intersection was a very congested intersection with numerous safety problems.

Mr. Jenkins explained to the Board the Special Exception plat versus the Proffers and alternatives available.

Mr. Hart verified his understanding of the plat and the various roads surrounding the intersection. He said he found much of the information confusing. There was a brief discussion between Mr. Hart and Mr. Nassimbeni regarding the plat, and who could legally grant a waiver.

Chairman DiGiulian called for speakers in support of the application.

Gregg Budnick, a professional engineer, came forward to speak in support of the application. He stated that he was the author of the Note 18 on the plat, as well as the company and firm that produced the site plan that is being appealed. He spoke in great detail about that particular intersection, how it had developed over the years, and his viewpoint that to allow additional traffic to access that area would be hazardous. He believed that staff allowed a very marginal condition to continue to exist, and that is the Parcel 5B would access Loisdale Rd.

Mr. Hart questioned Mr. Budnick about the site plan. Mr. Budnick explained in detail the site plan and various aspects of how the site plan was in compliance.

Mr. Hart asked Mr. Budnick to give an explanation for Proffer 7, and Mr. Budnick replied that Proffer 7 was written specifically to allow for the marginal situation which the traffic study allowed for at that time. He said staff did not completely agree with the findings of the report, and Proffer 7 was crafted in case Terminal Road was extended. He said that Terminal Road would be the favored point of access for parcel 5D.

Mr. Nassimbeni had no further comments.

Mr. Jenkins stated, in his rebuttal, that the scenario started with one point, and then led to a variety of others. He said a great deal would depend on Mr. Granahan's future site plan, what kind of uses, traffic studies, and traffic data would need to be submitted. He stated that the BOS had already determined that Loisdale would need to remain open, even if the Terminal Road connection were made.

Mr. Jenkins stated that Mr. Granahan's site plan would take public safety into consideration. He asked the Board to allow Mr. Granahan to use his property for neighborhood retail use as is called for by the Comprehensive Plan. He stated that Mr. Granahan should have the right to provide evidence that the interparcel access would not be detrimental.

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

Mr. Pammel stated he felt that the Director did act appropriately under Sect. 17-201 Par. 3C, and that by testimony it had been shown that there was a serious safety problem at the intersection. He stated he believed that the requirements of the code had been met.

Mr. Pammel moved that the Board affirm the Director in denying interparcel connection between the Hunter property and the Granahan property.

The motion failed for lack of a second vote.

Mr. Hart stated that the issue before the Board was if the waiver was appropriate under the Ordinance text. He stated he did not believe it was.

Mr. Hart made the motion to reverse the Director's Appeal Application A 2001-M-0026. Ms. Gibb seconded the motion which carried with a vote of 5-1, and the decision of the Director was overturned. //

Page 023 November 6, 2001, (Tape 2) Scheduled case of:

9:30 A.M. WILFREDO O. CIFUENTES, A 2001-LE-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is being used as a junk yard and that such activity has been established in violation of various Zoning Ordinance provisions. Located at 7716 / 7800 Cinder Bed Rd. on approx. 10.09 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 15, 15A and 16.

Chairman DiGiulian stated that he had received a letter requesting that this case be deferred to January.

William Shoup, Deputy Zoning Administrator, stated that the case before the Board involved numerous violations. He stated that this site had become a junkyard on property where it was not permitted. He stated that there were between 750 to 1500 cars, some located in a flood plain, there had been filing and grading violations, no site plan approval, no building permit for structures, and no Non-Rups. He said the property was one of a number of violations along Cinder Bed Road, and, in fact, there were a total of five appeals pending before the Board for Cinder Bed Road violations.

Mr. Shoup stated that there was a comprehensive multi-agency effort to address significant violations on Cinder Bed Road. He said this involved not only Zoning Enforcement, but the Fire Marshal's Office, the Police Department, Health Department and the Department of Public Works and Environmental Services.

Mr. Shoup stated that this property was probably one of the worse. He said when staff discovered that Mr. Cifuentes had not mailed his notices, staff Mr. Cifuentes indicated that he had no knowledge he had to send notices.

Mr. Shoup stated that because of the nature and extent of the violations, and the fact that Mr. Cifuentes had not been cooperative with enforcement staff, he was prepared to ask for dismissal of this case. Mr. Shoup said that the week prior, his office did receive a letter from Mr. Cifuentes asking for deferral and he noted that he was out of the country on a family emergency, and didn't know when he would return. He said Mr. Cifuentes had asked for deferral to January.

Mr. Shoup stated that while he appreciated the basis for the deferral request, this case had been frustrating and felt that a deferral would continue to add further frustration in the efforts to clean up Cinder Bed Road. He asked if the Board intended to defer the case, he would suggest it be deferred to January 2, 2002, and that no further deferrals be granted.

Mr. Hammack asked if there was any way to contact Mr. Cifuentes. Mr. Shoup replied that it had been very difficult to contact him throughout this process. He said that Mr. Cifuentes had given cell phone numbers that were invalid, and it was even more difficult to make contact now that he was out of the country.

Mr. Hart asked if anyone had spoken with Mr. Cifuentes when the notices did not go out. Mr. Shoup stated that Mr. Bakos from Zoning Enforcement spoke to him directly. Mr. Bakos replied that when he had spoken with Mr. Cifuentes by cell phone, he again expressed no knowledge of the need to notify the abutting property owners.

Mr. Hart and Mr. Shoup discussed the likelihood of Mr. Cifuentes being available for the next hearing. They also noted that he had sent his letter and purchased his tickets to leave the country shortly after he had spoken with Mr. Bakos.

Mr. Hammack asked when he was originally cited for violation. Mr. Shoup replied that it was June 25, 2001. Mr. Hammack asked if there had been any other continuances or requests for deferral and Mr. Shoup replied there had not been.

The Board had a brief discussion regarding the deferral. Mr. Shoup stated that the deferral could be to a date of January 22, 2002, and that his office would send out the notices to ensure everything was in order.

Mr. Kelley made a motion to dismiss appeal application A 2001-LE-025. Mr. Hammack seconded the motion which failed for lack of four votes. Mr. Kelley, Mr. Pammel, Ms. Gibb and Mr. Hammack did not support the motion.

Page 024, November 6, 2001, (Tape 2), WILFREDO O. CIFUENTES, A 2001-LE-025, continued from  
Page 023

Mr. Hart made a motion to defer appeal application A 2001-LE-025 to January 8, 2002. Mr. Hammack seconded the motion, which carried by a vote of 4-2. Mr. Kelley and Mr. Pammel did not support the motion and Mr. Ribble was absent from the meeting.

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Page 024, November 6, 2001, (Tape 2) Scheduled case of:

9:30 A.M. EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9100 Furnance Rd. on approx. 7.67 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((4)) 23. (Def. from 12/5/00)(moved from 3/6/01) (Def. From 4/3/01) (Def from 10/2/01 for decision only)

Chairman DiGiulian stated that this case had been deferred from October 2, 2001, for decision only.

Ms. Gibb recused herself from the hearing as she represented Mr. Harris' sister and brother-in-law in another matter.

Mr. Spence, Agent, stated that Mr. Harris had removed approximately 19 boxes and 30 cubic yards of debris which included 250 tons of stone and brick. He said he believed that there had been a substantial increase in the removal pace over the last 30 days. He also reported that since the last hearing, Mr. Harris had entered into a contract to sell the property and there was a 30 day study period which would end on approximately November 25, 2001.

Mr. Spence said the contract called for settlement within five months of that date or May of next year. He stated that Mr. Harris would then get 80% of the proceeds of the sale and 20% would be held by the developer. He said Mr. Harris would then be allowed to remain on the property for an additional six months at which time all the property and material would have to be off the property, otherwise the funds due to Mr. Harris would be utilized to remove that property.

Mr. Shoup stated that there had been substantial progress since the last deferral. He said that what remained on the property still constituted a junkyard. He stated he felt the progress was still slow, but deferred to the Board.

Mr. Kelley made a motion to defer the decision for another 30 days. Mr. Hammack seconded the motion which carried by a 5-0 vote. Ms. Gibb recused herself from the hearing and Mr. Ribble was absent from the meeting.

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Page 024, November 6, 2001, (Tape 2) After Agenda Item:

Request for Reconsideration  
VC 01-B-071, Donald and Irma Reiser

Jane Frost stated she had sent a letter to the Board requesting reconsideration. She stated that the applicant had not met the nine requirements for the variance. She said the shape of the land was not in any unusual condition to need a variance, as all the surrounding properties were the same shape. She said she didn't feel there was a hardship because of the lot shape, and to give a variance to the applicant would be giving him a special privilege. She said the character of the neighborhood was a big thing, and their home was radically different from the other homes. She requested time to hire a lawyer on behalf of their community.

The Board briefly discussed this case, and decided that a variance was preferable to a by-right because of the tree save and other conditions. The request was denied.

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Page 025 November 6, 2001, (Tape 2) After Agenda Item:

Approval of October 30, 2001 Resolutions

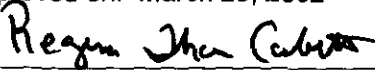
Mr. Hammack moved to approve the Resolutions of October 30, 2001, and Mr. Pammel seconded the vote which carried with a 7-0 vote.

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As there was no other business to come before the Board, the meeting was adjourned at 1:27 p.m.

Minutes by: Judith A. Gobbi

Approved on: March 26, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 13, 2001. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Chairman John DiGiulian was absent from the meeting.

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

Page 027, November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JONATHAN & CHRISTINE GOLD, VC 01-D-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line. Located at 6523 Beverly Ave. on approx. 11,337 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((8)) (4) 8.

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. Jonathan Gold, 6523 Beverly Avenue, 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 the construction of an addition to be located 6.6 feet from a side lot line. A minimum side yard of 12 feet is required; therefore a variance of 5.4 feet was requested for the kitchen and storage area addition.

Mr. Gold presented the variance request as outlined in the statement of justification submitted with the application. He said the variance request was to enlarge the kitchen. Mr. Gold said the previous owner had built a carport next to the kitchen and he wanted to remove the carport and construct a kitchen in that area. Mr. Gold presented a letter from the adjoining neighbor on that side supporting the variance. He said the lot was narrow and the proposed location was the best place for the addition because of topographical conditions on the lot.

Mr. Pammel asked the applicant if he would be satisfied with a 10-foot addition as opposed to a 12.2-foot addition. Mr. Gold replied yes.

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

Mr. Pammel said that he felt 6.6 feet was too close and he would be more inclined to go with 8.8 feet which would accommodate a 10-foot expansion. Mr. Pammel moved to approve-in-part VC 01-D-142 for the reasons noted in the Resolution.

Mr. Pammel noted that there were variances approved in the neighborhood ranging from a side yard setback of 10.4 feet to 7.2 feet.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JONATHAN & CHRISTINE GOLD, VC 01-D-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line. **(THE BOARD APPROVED THE ADDITION 8.8 FEET FROM THE SIDE LOT LINE)** Located at 6523 Beverly Ave. on approx. 11,337 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((8)) (4) 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 November 13, 2001; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat (**THE BOARD APPROVED THE ADDITION 8.8 FEET FROM THE SIDE LOT LINE**) prepared by Larry N. Scartz, dated, August 20, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Page 029 November 13, 2001, (Tape 1), JONATHAN & CHRISTINE GOLD, VC 01-D-142, continued from Page 028

Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 029 November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JEROME J. & JULIA A. KRISS, VC 01-M-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lots 2 & 3 having a lot width of 10.0 ft. Located at 7100 Woodland Dr. on approx. 2.32 ac. of land zoned R-2. Mason District. Tax Map 71-3 ((7)) 546B. (def from 8/21/01 and 10/2/01 for dec. only)

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. Jane Kelsey, Jane Kelsey and Associates, Inc., 4041 Autumn Lane, Fairfax, Virginia, replied that it was.

Vice Chairman Ribble noted that the application had been deferred for decision only.

Mr. Pammel said Ms. Kelsey had raised an issue about reconsideration in one of her recent cases and he asked her if there was an interest on her part, before the Board took action, for a revised plat showing two lots.

Ms. Kelsey said she faxed the events that had happened since the last public hearing to the Board members. She said the applicants believed that 3 lots were in character with the surrounding area as it was currently developed and was reasonable use of the land. Ms. Kelsey said the stacking issue had been addressed in the information that was submitted. She said there were neighbors present to say that they would not oppose the application.

Mr. Hart asked whether the proposed driveway would be 15 feet away from the East Side property line. Ms. Kriss replied that she had informed the neighbors concerned about the driveway that she would build a fence one-foot inside her property line. She said she assured the neighbors that she would be very considerate and careful with whatever was done with the pipestem. Ms. Kriss said the easement was 30 feet in front and decreased at the back lot to 24 feet. She said the common goal was to preserve the rural ambiance.

Mr. Hart asked staff whether the dimension of separation between the driveway and the eastern property line was less than 15 feet. Ms. Josiah replied yes, that it was 5 feet.

Ms. Kelsey replied that was the easement and the actual pavement was farther over.

Mr. Hart said there was a memo from the Virginia Department of Transportation (VDOT) which requested that the other side of the street be depicted on the plat so that a determination could be made regarding the entrance being aligned with Meadowood Forest Court, the intersection opposite the house. He said that was not depicted on the new plat, and asked if the entrance was still offset to the east. Ms. Kriss said it was offset to the east. She said Meadowood Forest Court was a 47 to 50 foot wide easement with ditches, but it was a public street. Ms. Kriss said when the engineer originally did the configuration he aligned the entrance. She said it was extremely destructive along the front of the property and she asked the engineer to realign it because they were having a private lane there and the intent was to keep the area very secluded.

Mr. Hart asked whether the new plat needed to depict areas of tree preservation or clearing and grading. Ms. Josiah said staff requested that tree preservation and limits of clearing and grading be shown on the plat and that's why staff recommended the development condition be placed on the property such that the Urban Forester would have the discretion to decide where preservation was mandated.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to deny VC 01-M-095 for the reasons noted in the Resolution.

Mr. Pammel said he didn't feel standard #4 was met.

Ms. Gibb stated that she would abstain from the vote because she did not hear the initial presentation.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEROME J. & JULIA A. KRISS, VC 01-M-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lots 2 & 3 having a lot width of 10.0 ft. Located at 7100 Woodland Dr. on approx. 2.32 ac. of land zoned R-2. Mason District. Tax Map 71-3 ((7)) 546B. (def from 8/21/01 and 10/2/01 for dec. only) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 13, 2001; and

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

1. The applicants are the owners of the land.
2. Standards 6, 7, and 9 have not been met.
3. The northern side of Woodland Drive is different in character than the southern side as it has mature trees and large lots. A triple stacked pipestem on the north side of Woodland Drive and a house angled at 45 degrees would introduce a new element to the neighborhood and be out of character.
4. Two lots could have been supported but the subdivision into three lots represents a convenience to the applicant who has not demonstrated any hardship.
5. There is a pre-existing use on the lot.
6. There was no depiction of tree save area or clearing and grading depicted on the plat.
7. The Virginia Department of Transportation requested a depiction of the intersection to align the court to the entrance to the driveway, which was not submitted.
8. The construction of the pipestem driveway could damage the trees on the adjacent property to the east.
9. The by-right development of the site may be worse than the variance option but since the standards for the granting of a variance have not been met, the variance can not be granted.

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 4-0-1. Ms. Gibb abstained from the vote, Mr. Hammack was not present for the vote and Chairman DiGiulian was absent from the meeting. Mr. Pammel moved to waive the 12-month waiting period for refileing an application. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 2001.

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Page 031, November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GERALD F. MASOUDI, VC 01-P-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 4B having a lot width of 70.01 ft. and proposed Lot 4A having a lot width of 71.65 ft. Located at 7447 Idylwood Rd. on approx. 1.0 ac. of land zoned R-3. Providence District. Tax Map 40-3 ((20)) 4.

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. Robert Lawrence, Agent, Reed, Smith, Hazel & Thomas, replied that it was.

Mr. Hart gave a disclosure but indicated that it would not affect his ability to participate in the public hearing.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of the application parcel into two (2) lots, with proposed Lot 4B having a lot width of 70.01 feet and proposed Lot 4A having a lot width of 71.65 feet. A minimum lot width of 80 feet is required by the Ordinance for the R-3 zoning district; therefore, variances of 9.99 feet and 8.35 feet were requested, respectively. Staff believed that the application met all applicable variance standards as set forth in the Zoning Ordinance.

Mr. Lawrence, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the subject property was before the BZA in October of 1999, at which time they approved a variance for the division of the parcel and the two lots. Mr. Lawrence stated that going through the subdivision process, it was determined that the cutting of the additional lot took the density over the R-2 Zoning District by one tenth, so that the density was 2.10 instead of 2.0, which meant they could not do the subdivision. He said they went through the rezoning process to rezone the property to R-3 to eliminate the density issue. Mr. Lawrence said he thought the person who submitted a letter in opposition, misunderstood what they were doing. He said they had to come back for a variance after

the rezoning but he thought the person thought they were trying to obtain an additional lot and that was not the case. Mr. Lawrence said the request was basically what the Board had previously approved.

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

Ms. Gibb moved to approve VC 01-P-141 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GERALD F. MASOUDI, VC 01-P-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 4B having a lot width of 70.01 ft. and proposed Lot 4A having a lot width of 71.65 ft. Located at 7447 Idylwood Rd. on approx. 1.0 ac. of land zoned R-3. Providence District. Tax Map 40-3 ((20)) 4. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 13, 2001; and

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

1. The applicant is the owner of the land.
2. Staff recommended approval of the variance.
3. The applicant had received variance approval previously for the same property.
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 subdivision of Lot 4 as shown on the plat prepared by Huntley, Nyce and Associates, Ltd. dated June 19, 2001, as revised through July 20, 2001. All development shall be in conformance with the proffers accepted pursuant to RZ 2000-PR-035 and 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 lots shall access Idylwood Road from the shared driveway, as depicted on the variance plat.
3. Right-of-way with an ultimate width measuring forty-five (45) feet from the centerline of Idylwood 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. 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 November 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 033 November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. REV. SUSAN B. LINDSEY D/B/A CORNERSTONE COMMONS, INC., SP 01-H-050 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home professional office. Located at 2636 Black Fir Ct. on approx. 16,655 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 26-3 ((10)) 204.

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. Susan Lindsey, 2636 Black Fir Court, Reston, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a home professional office for pastoral counseling services. The applicant proposed to provide individual pastoral counseling services from her home to serve one client at a time with a maximum of twenty clients per week. The proposed office would consist of approximately 154 square feet, would be located within the dwelling, and no signage was proposed. The applicant proposed hours of operation from 8:00 a.m. to 10:00 p.m., Monday through Friday. However, staff recommended that hours of operation be limited from 9:00 a.m. to 5:00 p.m., Monday through Friday, with one client permitted to be served between 5:00 p.m. and 10:00 p.m. per day. Staff recommended approval of SP 01-H-050.

Ms. Lindsey presented the request as outlined in the statement of justification submitted with the application. She stated that she had been in office space for 8 years providing pastoral counseling and wanted to work

from home to be with her daughter. Ms. Lindsey said there would be no impact on the neighborhood. She said 4 cars could park in her driveway. Ms. Lindsey stated that the reason she had requested those hours was because most of her clients worked during business hours. She said that she had spoken with the neighbors and none opposed the application.

Mr. Hammack asked whether there would be any employees. Ms. Lindsey replied no.

Vice Chairman Ribble called for speakers.

Brenda Root, 2642 Black Fir Court, came forward to speak in support of the application. She said she supported the extended hours and they would not impinge on the quality of life in the neighborhood.

Mark Lindsey, 2636 Black Fir Court, came forward to speak in support of the application. He said the request would cause no impact on the neighborhood or property values.

Mr. Kelley moved to approve SP 01-H-050 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

REV. SUSAN B. LINDSEY D/B/A CORNERSTONE COMMONS, INC., SP 01-H-050 Appl. under Sect(s) 3-203 of the Zoning Ordinance to permit a home professional office. Located at 2636 Black Fir Ct. on approx. 16,655 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) 204. 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 13, 2001; 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 special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s) 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2636 Black Fir Court, (16,655 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 Charles R. Johnson dated October 28, 1993, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The hours of operation of the home professional office shall be limited to 9:00 a.m. to 5:00 p.m., Monday through Friday. In addition, a maximum of one (1) client per day may receive counseling services between 5:00 p.m. and 10:00 p.m., Monday through Friday.
6. The maximum number of employees shall be limited to one (1) on-site at any one time, and shall be the applicant only.
7. The area utilized for the home professional office shall not exceed 154 square feet.
8. The dwelling that contains the home professional office shall also be the primary residence of the applicant.
9. Parking shall be limited to two (2) spaces for the dwelling and four (4) spaces for the Home Professional Office. All parking shall be on-site as shown on the special permit plat.
10. There shall be only one client at any one time on site and the maximum number of clients per week shall be limited to twenty (20).
11. There shall be no signage associated with the home professional office.

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

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

Ms. Gibb seconded the motion which carried by a vote of 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 November 28, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 035 November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GERALDINE F. LOCKE AND FRANK Y. PERRIN, VC 01-B-143 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 3.8 ft. and shed 3.7 ft. from side lot line. Located at 7105 Leesville Blvd. on approx. 11,340 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (3) 18.

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. Frank Perrin, 7105 Leesville Boulevard, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 3.8 feet from the side lot line and a shed 3.7

feet from the side lot line. A minimum side yard of 12 feet is required with a permitted extension of 5.0 feet for the addition; therefore, variances of 3.2 feet was requested for the addition and 8.3 feet for the shed.

Mr. Perrin presented the variance request as outlined in the statement of justification submitted with the application. He said the neighbors were in support of the application but requested that he keep the bush on the property line.

Mr. Hart asked whether the carport would be bigger than the tent that was currently there. Mr. Perrin replied no.

Mr. Hammack asked whether there was any other parking area on the lot. Mr. Perrin replied no.

Mr. Hammack asked if there was a place in the rear of the yard where the applicant could put a garage. Mr. Perrin replied that there was a steep slope and 40 year old trees in the rear yard.

Mr. Hammack asked if there was any other place on the lot for the shed. Mr. Perrin said if the shed was located some place else, he would not be able to access it. He said the shed would have the same roof line as the house.

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

Mr. Hammack moved to approve-in-part VC 01-B-143 for the reasons noted in the Resolution.

Ms. Gibb said she didn't see much difference between the shed and the carport as a convenience.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GERALDINE F. LOCKE AND FRANK Y. PERRIN, VC 01-B-143 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 3.8 ft. and shed 3.7 ft. from side lot line. **(THE SHED WAS DENIED)** Located at 7105 Leesville Blvd. on approx. 11,340 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (3) 18. 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 13, 2001; and

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

1. The applicants are the owners of the land.
2. The topographical conditions in the rear yard preclude construction of a garage or a parking area.
3. The applicant satisfied the standards for a variance with respect to the carport.
4. The shed is more of a convenience rather than a hardship.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 carport (**THE SHED WAS DENIED**) shown on the plat prepared by Larry N. Scartz, dated July 18, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The carport 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 5-1. Ms. Gibb voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refileing an application. 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 November 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 031, November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. RODGER G. & COLETTE M. ASHLEY, VC 01-B-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line such that side yards total 16.3 ft. Located at 5401 Sideburn Rd. on approx. 10,744 sq. ft. of land zoned R-2

(Cluster). Braddock District. Tax Map 77-2 ((2)) 112.

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. Roger Ashley, 5401 Sideburn Road, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of carport and second story storage area to be located 5.5 feet from the side lot line such that side yards total 16.3 feet. A minimum side yard of 8 feet and total side yards of 24 feet are required; therefore, variances of 2.5 and 7.7 feet were requested respectively.

Mr. Ashley presented the variance request as outlined in the statement of justification submitted with the application. He said the reason he wanted the carport was to house a third vehicle that he used for construction. Mr. Ashley stated that he had fallen during inclement weather because his driveway was slanted. He said he had also lost a couple of cars from his 2-car garage that slid down the driveway into the street. He said the design of the carport would match the house. Mr. Ashley said there was no objection from the neighbors.

Mr. Hammack asked about the second story addition. Mr. Ashley said the second story addition would be a small walk-in closet off the bedroom.

Mr. Hammack asked if there was an existing 2-car garage. Mr. Ashley replied yes.

Mr. Hart asked who owned the large tree. Mr. Ashley stated that he owned the tree and that it would be removed.

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

Mr. Pammel said the addition was too much bulk to be 5.5 feet from the property line. He said the addition was primarily for convenience. He moved to deny VC 01-B-146 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RODGER G. & COLETTE M. ASHLEY, VC 01-B-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line such that side yards total 16.3 ft. Located at 5401 Sideburn Rd. on approx. 10,744 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 77-2 ((2)) 112. 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 13, 2001; and

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

1. The applicants are the owners of the land.
2. The applicant has not satisfied the standards for a variance.
3. There is too much bulk with the carport and the addition.
4. The addition is primarily for convenience.

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 5-1. Ms. Gibb voted against the motion. Mr. Pammel moved to waive the 12-month waiting period for refiling an application. Mr. Hammack 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 November 28, 2001.

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Page 039, November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TINA S. QUALL, VC 01-P-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line. Located at 2904 Rogers Dr. on approx. 9,209 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((15)) 111. (admin moved from 10/2/01)

The applicant was not present and the application was moved to the end of the agenda.

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Page 039, November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PATRICK E. PATTERSON AND DEBRA A. WHITAKER, VC 01-M-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence and an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 3449 Sleepy Hollow Rd. on approx. 23,092 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((1)) 52. (Moved

from 10/16 for notices)

Ms. Gibb said she represented Seville Homes and subdivided the subject property; consequently, she recused herself from the public hearing.

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. Reed Dudley, Runyon Dudley Associates, 10650 Main Street, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a 6.0-foot high fence and an accessory structure, consisting of a swimming pool, in a front yard of a lot containing 36,000 square feet or less. The maximum height for a fence in a front yard is 4.0 feet; therefore, a variance of 2 feet was requested.

Mr. Dudley, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the house had been oriented to the adjoining houses such that it was accessed from an easement to the north of the property. Mr. Dudley said the house's back door was technically the front of the property. He said it was similar to a reverse frontage house, but due to the fact that this was not considered a corner lot or a through lot, the reverse frontage section of the Zoning Ordinance did not apply. Mr. Dudley said the application met the requirements of hardship and the only functional backyard of the house became its front yard. He said a pool provided for ultimate use of the backyard. Mr. Dudley said the fence provided for the use and the screening in the rear of the house and it had adequate room to create a street front on Sleepy Hollow Road in keeping with the neighborhood. He said the fence was located behind a berm that would be fully landscaped. Mr. Dudley said they had met with Janet Hall, Planning Commissioner, and all concerns had been addressed.

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

Mr. Hart moved to approve VC 01-M-123 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK E. PATTERSON AND DEBRA A. WHITAKER, VC 01-M-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence and an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 3449 Sleepy Hollow Rd. on approx. 23,092 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((1)) 52. (Moved from 10/16 for notices) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 13, 2001; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The fence will be screened by the berm.
4. The lot is oddly positioned.
5. The back of the house faces the street.
6. The proposed location is the only place for the pool.
7. The request would not be detrimental to the neighborhood.

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



Ordinance:

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

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

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

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

1. This variance is approved for the location of a 6.0 foot high fence and a swimming pool, shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated July 5, 2000, as revised through June 28, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Pammel and Mr. Kelley seconded the motion which carried by a vote of 5-0. Ms. Gibb recused herself from the vote and Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 042 November 13, 2001, (Tape 1), Scheduled case of:

9:30 A.M. DELANO CONTAINER SERVICES, INC., A 2001-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a recycling center without site plan approval or a Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 5520 Vine St. on approx. 18,703 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 10. (moved from 4/24/01 and 8/7/01)

Vice Chairman Ribble noted that the Board had approved an Intent to Defer to March 5, 2002, on October 30, 2001.

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Page 042 November 13, 2001, (Tape 1), Scheduled case of:

9:30 A.M. GEORGE & ANGELISA MCLEAN, A 2001-MV-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are continuing to operate a vehicle major service establishment, a junkyard, and a storage yard in the R-2 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8532 Highland La. on approx. 12,468 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((7)) 37. (CONTINUED FROM 10/2/01).

Susan Epstein, Zoning Administration Division, stated that the appeal at issue was of the determination that the appellants were continuing to operate a vehicle major service establishment, a junkyard, and a storage yard in the R-2 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. She stated that on Oct. 2, 2001, the BZA continued the public hearing to November 13, 2001, and requested that staff and the appellants provide additional information. Ms. Epstein stated that the information requested was provided in the November 5, 2001, memorandum to the BZA from William Shoup, Deputy Zoning Administrator. She said that although not part of the appeal, the appellants contended that they had a nonconforming right to conduct a vehicle repair establishment because it was established prior to 1941. Ms. Epstein said based on recent evidence presented by the appellant, it appeared that a repair use was established prior to 1941.

Mr. Hart said if the Board concluded, that repairing farm equipment in 1940, prior to the adoption of the 1941 Zoning Ordinance, then the repair of farm equipment would grandfather vehicle repair in the garage currently. Ms. Epstein concurred.

Mr. Hart said the other issues of junkyard and storage yard had not been addressed. Ms. Epstein said that those items cited in the Notice of Violation were associated with the vehicle repair business.

Mr. Hart asked if the Board concluded because of the repair of farm equipment in 1940 that the auto repair business is okay, would there still be some miscellaneous issues about other things. Ms. Epstein replied that the violation would be cleared.

Ms. Gibb asked whether the violation was just cleared or did the Board need to overrule the Zoning Administrator.

Eileen McLane, Deputy Zoning Administrator, indicated that the Board would need to overrule the Zoning Administrator.

Ms. Gibb moved to reverse the determination of the Zoning Administrator. Mr. Hart seconded the motion.

Mr. Hammack said he would like further investigation into the extent of the repair. He said he would not support the motion.

Ms. Gibb stated that there were lots of letters submitted from people indicating that there was auto repair and tow truck service on the property. She said she felt the evidence was sufficient.

Ms. Gibb asked whether the Zoning Administrator determined that the Board had to vote this way. Ms. McLane replied that the evidence that was presented was 3 affidavits from former residents of that area that indicated that there was farm equipment repair on the property in 1940. She said there could still be a question as to the scope and the extent to that type of repair and whether it maintained itself throughout the years. Ms. McLane said there was evidence that there was a type of vehicle repair back in 1940 which

Page ~~042~~ 043, November 13, 2001, (Tape 1), GEORGE & ANGELISA MCLEAN, A 2001-MV-015, continued from Page 042

would give it some credence of a nonconforming status.

Ms. Gibb said staff's position was that the Board had to act rather than staff withdrawing the Notice. Ms. McLane replied that was correct.

Mr. Pammel stated that the documentation was tenuous and he would like to have more information. He moved to defer decision for 30 days to allow staff to go back through using aerial photography to obtain more documentation that would support the affidavits.

Ms. McLane stated that the burden was on the appellant to show a nonconforming right. She said staff had reviewed aerial photographs and it was inconclusive as to what types of activities were being conducted in the 1940s.

Mr. Pammel said he hated to put the burden on the owner, but he would like to see an expert look at the photography and make a determination.

Mr. Hammack said he agreed with Mr. Pammel and he felt the Board needed more information. He said the County seemed to be putting the Board in a position to see who was right and the Board did not have to do that if they did not want to.

Mr. Kelley said he supported the original motion. He said the appellant did what they were asked to do and the County staff had acknowledged the information.

Mr. Hart said he was troubled by the physical location of the activity and was there GIS photography reflecting where the garage was located. He said he was persuaded that there had been some type of auto repair for quite some time.

Ms. Gibb stated that there was 4 affidavits submitted and the appellants had met the burden of proof.

Mr. Hammack seconded the motion to defer which failed by a vote of 2-4. Ms. Gibb, Vice Chairman Ribble, Mr. Hart and Mr. Kelley voted against the motion.

The original motion to reverse the determination of the Zoning Administrator carried by vote of 5-1. Mr. Hammack voted against the motion and Chairman DiGiulian was absent from the meeting.

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Page ~~043~~ November 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TINA S. QUALL, VC 01-P-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line. Located at 2904 Rogers Dr. on approx. 9,209 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((15)) 111. (admin moved from 10/2/01)

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. Tina Quall, 2904 Roger Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure 3.0 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 7.0 feet was requested.

Ms. Quall presented the variance request as outlined in the statement of justification submitted with the application. She stated that the request was to construct a detached single car garage. Ms. Quall submitted photographs of homes that had been built with similarly detached garages. She said her lot was narrow, but deep and long, and there was no other area for the garage. Ms. Quall said the garage would match the design of the house.

Mr. Hammack asked if there were any other garages within 3 feet of the property line. Ms. Quall stated that

they were all 3 feet or less from the property line. She said all the neighbors were in support of the application.

Mr. Hammack asked if the garages were constructed in conformance. Ms. Stanfield stated that other variances and special permits had been approved in the area but there was no way for her to determine if the variances were associated with the garages reflected in the photographs submitted.

Mr. Hammack asked the applicant if the garage could be moved over 1 foot. Ms. Quall replied yes.

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

Mr. Hammack moved to approve-in-part VC 01-P-114 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TINA S. QUALL, VC 01-P-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line. **(THE BOARD APPROVED THE GARAGE 4.0 FEET FROM THE SIDE LOT LINE)** Located at 2904 Rogers Dr. on approx. 9,209 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((15)) 111. (admin moved from 10/2/01) 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 13, 2001; 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 standards for the granting of a variance.
3. The photographs reflect that some of the garages in the subdivision were built at the time the original dwellings were built and at that time it was common for garages to be built on the property line.
4. The variance would not change the character of the neighborhood.
5. The floodplain and the drainage area in the rear preclude the accessory structure to be placed in that location.
6. The lot is narrow which causes the building envelope to be limited.
7. The variance request is minimal and the garage proportions 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 **APPROVED-IN-PART** with the following limitations:

- 1. This variance is approved for the location of an accessory structure (garage) (**THE BOARD APPROVED THE GARAGE 4.0 FEET FROM THE SIDE LOT LINE**), shown on the plat prepared by Brian W. Smith, dated June 4, 2001, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Pammel seconded the motion which carried by a vote of 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 November 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 045 November 13, 2001, (Tape 1), After Agenda Item:

Approval of June 5, 2001 and June 26, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 045 November 13, 2001, (Tape 1), After Agenda Item:

Additional Time Request  
Your Child's Place, Inc SPA 95-H-007

Mr. Kelley moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date is February 16,

Page 046 November 13, 2001, (Tape 1), After Agenda Item, continued from Page 045

2003.

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Page 046 November 13, 2001, (Tape 1), After Agenda Item:

Additional Time Request  
Scott and Martha George VC 98-H-117

Mr. Kelley moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date is January 6, 2004.

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Page 046 November 13, 2001, (Tape 1), After Agenda Item:

Additional Time Request  
John R. and Janie L. Fish, Trustees, and Kenneth A. and Patricia M. Windheim  
VC 99-D-193

Mr. Kelley moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date is February 15, 2002.

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Page 046 November 13, 2001, (Tape 1), After Agenda Item:

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

Mr. Kelley moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date is to June 27, 2002.

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Page 046 November 13, 2001, (Tape 1), After Agenda Item:

Additional Time Request  
Faith Bible Presbyterian Church, SP 98-D-049,

Mr. Kelley moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date is to June 2, 2002.

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Page 046 November 13, 2001, (Tape 1), After Agenda Item:

Request for Reconsideration  
Trustees of the Dranesville United Methodist Church  
SPA 83-D-022-2

The Board took no action on the above referenced request; therefore, the Request for Reconsideration was denied.

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Approval of November 6, 2001 Resolutions.

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:10 a.m.

Minutes by: Regina Thorn Corbett

Approved on: March 26, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

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

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 27, 2001. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

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

Page ~~049~~ November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M.       KENNETH AND RUBY KRANTZ, VC 01-V-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 4.0 ft. and 12.0 ft. and addition 7.0 ft. from side lot line. Located at 3605 Surrey Dr. on approx. 17,415 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((5)) 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. Jim Garner, Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of two decks, 4 feet and 12 feet and a sunroom addition 7 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, variances of 11 feet and 3 feet were requested for the decks and a variance of 8 feet was requested for the sunroom addition. A 0.6 foot administrative reduction in the minimum required front yard was granted for the existing dwelling on November 15, 2001.

Mr. Garner presented the variance request as outlined in the statement of justification. He stated that the lot was very narrow and the house was situated in an angled position on the lot. He said that the sunroom proposal incorporated two existing second floor doors that at the present time were unsafe for exiting in case of a fire.

Mr. Hart asked why the stairs were located outside the addition as opposed to closer to the existing home. Mr. Garner replied in that location the stairs would block a lower level window and the applicant wanted direct access from the parking lot to the stairs.

Mr. Hart asked why the addition could not be located on the other side of the home. Ms. Krantz replied that there was a fireplace that took up that entire wall and it would change the whole layout of the rooms. She stated that she was trying to achieve an easy access for her handicapped mother-in-law to visit and that was the reason for the proposed location of the stairway. She said that the proposed deck would be located on the ground level of the home.

Mr. Hart asked staff how many feet were available to build on the other side of the home. Ms. Josiah replied that there was 25 feet of space to build on the other side of the home.

Chairman DiGiulian asked for speakers.

Mrs. Donald R. West, 3609 Surrey Drive, came forward to speak in opposition. She explained that she lived adjacent to the property in question. She submitted pictures of the subject property illustrating the large size of the home before the proposed variance. She stated that the proposed variance would exacerbate the size of the home and negatively impact her property. She explained that her family owned two lots adjacent to the subject property and Lot 10 was currently not developed. She stated that approval of the variance would affect how the lot could be developed in the future. She stated that her son lived on the property adjacent to Lot 10 and she did not live in the neighborhood currently but had plans to construct a home on Lot 10 when her health declined to the point where she could not maintain her current home. Ms. West stated that the applicant had repeatedly offered to purchase Lot 10 and she stated for the record that the lot was not for sale.

Mrs. Krantz, in her rebuttal, submitted photographs of the adjacent lots from inside the family room of the subject property. She stated that at the request of the West Family she had increased the screening between the two properties. She stated that her daughters had severe reactions to insect bites and the

sunroom would allow them to enjoy the yard without suffering from insect bites. Ms. Krantz stated that she had offered to purchase Lot 10 to ensure that it would not be built on. She stated that she did not know that there was any opposition to the variance request until Mrs. West spoke.

Chairman DiGiulian closed the public hearing.

Mr. Ribble stated that the subject property was imposing to the neighbors and the proposed additions were too large. He said the property in question did not meet the standards required for the granting of a variance.

Mr. Hart stated that the addition was designed with reference to the house rather than any site constraints or the lot line and there were other areas on the property to locate an addition.

Mr. Ribble moved to deny VC 01-V-145 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH AND RUBY KRANTZ, VC 01-V-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 4.0 ft. and 12.0 ft. and addition 7.0 ft. from side lot line. Located at 3605 Surrey Dr. on approx. 17,415 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((5)) 11A. 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 27, 2001; and

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

1. The applicants are the owners of the land.
2. The house is much larger and imposing to the adjacent lot.
3. The property does not meet 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.

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

Mr. Kelley seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote and Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 2001.

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Page 051, November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. NANCY A. WOLYNETZ, VC 01-P-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from rear lot line. Located at 2830 Raymond Ct. on approx. 2,046 sq. ft. of land zoned R-5. Providence District. Tax Map 50-2 ((14)) 29.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, Patio Enclosures, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a sunroom addition to be located 12.6 feet from the rear lot line. The Zoning Ordinance required a rear yard of 20 feet; therefore, a variance of 7.4 feet was requested.

Mr. Reames, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the proposed sunroom would be no closer to the side yards than the existing deck. He said that the townhouse was an end unit and the position of the proposed sunroom on the end unit could not be built on an interior unit. He said that the lot was shallow. He stated that the Homeowners Association had approved the proposed sunroom.

Ms. Gibb clarified that the proposed sunroom would replace the current deck. Mr. Reames replied that it would. Ms. Gibb asked if any of the other townhouses had decks. Mr. Reames replied that there were several other decks in the area.

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

Ms. Gibb stated that the lot was not any more shallow than any of the other lots. She stated that although it was an end unit it did not comply with the prescribed standards for the granting of a variance.

Ms. Gibb moved to deny VC 01-P-147 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

NANCY A. WOLYNETZ, VC 01-P-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from rear lot line. Located at 2830 Raymond Ct. on approx. 2,046 sq. ft. of land zoned R-5. Providence District. Tax Map 50-2 ((14)) 29. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 27, 2001; and

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

1. The applicant is the owner of the land.
2. The lot is not any more shallow than any of the other lots.
3. The property does not meet Standard 2.

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 6-0. Mr. Pammel was absent from the meeting.

Page ~~053~~ November 27, 2001, (Tape 1), NANCY A. WOLYNETZ, VC 01-P-147, continued from Page ~~052~~

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 2001.

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Page ~~052~~, November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. RENA AUSTER PRESLEY, SP 01-S-051 Appl. under Sect(s). 3-103, 8-905 and 8-914 of the Zoning Ordinance to permit a barber shop or beauty parlor as a home occupation and permit reduction in minimum yard requirements based on error in building location to permit dwelling to remain 10.6 ft. from side lot line. Located at 6901 Lee Chapel Rd. on approx. 32,090 sq. ft. of land zoned R-1. Springfield District. Tax Map 88-1 ((1)) 41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rena Auster Presley, 6901 Lee Chapel Road, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a special permit for a home occupation to provide a hair salon from within the addition of her home to serve one client at a time with a maximum of three clients per day. The applicant would be the only employee. The proposed hours of operation for the home occupation were 11:00 a.m. to 7:00 p.m. Monday through Thursday, and 10:00 a.m. to 6:00 p.m. Fridays and Saturdays. The proposed hair salon would be located within a 24.2 foot by 13.9 foot room of the existing dwelling for a total area of 336 square feet or 19 percent of the dwelling. The room had access to a deck in the side yard and there were four parking spaces provided which included the carport. No construction or other physical changes were proposed on the site of the application. The applicant also requested a special permit for a reduction in the minimum yard requirements based on an error in building location to permit the existing dwelling to remain 10.6 feet from the side lot line. According to the applicant, the portion of the dwelling that was proposed for the hair salon was located 10.6 feet from the side lot and was constructed prior to the purchase of the dwelling in 1993. County records did not indicate that any building permits were obtained for this portion of the dwelling. The Zoning Ordinance required a minimum side yard of 20 feet; therefore, a modification of 9.4 feet was requested. Staff recommended approval of the application for the hair salon.

Mr. Hart asked if the road improvements on Lee Chapel Road would have any impact on the application. Mr. Bernal replied that the Office of Transportation was in support of the application at the present time and at the conclusion of construction of the road improvements. Mr. Hart asked staff to provide the Board with a layout of the proposed road improvements with regard to ingress and egress to the subject property. Mr. Bernal replied that staff would provide the Board with that information.

Ms. Presley presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the proposed beauty salon would not impact traffic as she would be seeing one client at a time with a maximum of three per day. She said that all of the neighbors were in support of the application.

Mr. Kelley asked the applicant if she agreed with the proposed development conditions. She replied that she did.

Henry Presley, 6901 Lee Chapel Road, Burke, Virginia, came forward and stated that he was the applicant's husband and he also had read the development conditions and agreed with them.

Mr. Hart asked the applicant if she had obtained a building permit from the County for the construction of the addition. Ms. Presley replied that she had.

Mr. Hart asked staff if there was any record of a building permit. Mr. Bernal replied that there was not.

Mr. Presley reiterated that the building permit for the addition was issued in 1993.

Chairman DiGiulian called for speakers.

Carolyn Hague, Goldfield Lane, came forward to speak. She stated that she was not in opposition but she wanted to make sure that the parking area was to be as stated in the staff report. She said that parking on the property was very tight. She stated that she was against any parking off-site.

Mr. Presley, in rebuttal, stated that the Department of Transportation was going to replace the existing circular driveway with a larger driveway, which would provide additional parking spaces.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 01-S-051 for the reasons stated in the Resolution.

Mr. Hammack revised the motion to include a change in the hours of operation to be 11:00 a.m. to 6:00 p.m. Monday through Thursday and 10:00 a.m. to 5:00 p.m. Friday and Saturday.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

RENA AUSTER PRESLEY, SP 01-S-051 Appl. under Sect(s). 3-103, 8-905 and 8-914 of the Zoning Ordinance to permit a barber shop or beauty parlor as a home occupation and permit reduction in minimum yard requirements based on error in building location to permit dwelling to remain 10.6 ft. from side lot line. Located at 6901 Lee Chapel Rd. on approx. 32,090 sq. ft. of land zoned R-1. Springfield District. Tax Map 88-1 ((1)) 41. 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 27, 2001; and

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

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

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103, 8-905 and 8-914 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 6901 Lee Chapel Road, 32,090 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 Larry N. Scartz, dated November 22, 1996, as qualified by these development conditions.
- 3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan

submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The hours of operation of the barber shop/ beauty parlor shall be limited to 11:00 a.m. to 6:00 p.m., Monday through Thursday and 10:00 a.m. to 5:00 p.m. on Fridays and Saturdays.
6. The applicant only shall provide the services of the beauty parlor/ barber shop. No other employees shall be permitted on-site.
7. The area utilized for the special permit use shall not exceed 336 square feet.
8. The dwelling that contains the special permit use (barber shop/ beauty parlor) shall also be the primary residence of the applicant.
9. Parking shall be limited to two (2) spaces for the dwelling and two (2) spaces for the special permit use. All parking shall be on-site.
10. There shall be only one client at any one time on site and the maximum number of clients per day shall be limited to three (3).
11. There shall be no signage associated with the special permit use.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 055 November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. SUSAN ROBSON, SPA 01-Y-029 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirement for certain R-C lots to permit construction of addition 26.5 ft. from front lot line. Located at 6511 Trillium House La. on approx. 13,006 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (2) 49.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Robson, 6511 Trillium House Lane, Centreville, Virginia, replied that it was.

Mr. Hart recused himself from the public hearing as he lived across the street from the subject property and his home was used as an example in the staff report.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. The original case was heard and approved on July 24, 2001, however the approval for the side yard requirement

was the only thing that was heard by the Board at that public hearing. The front yard requirement was inadvertently left out from the original request. The applicant requested a special permit for modification to the minimum yard requirements for the R-C District to permit the construction of a second story bedroom addition to be located 26.5 feet from the front lot line. The Zoning Ordinance requires a front yard of 40 feet; therefore, a modification of 13.5 feet was requested.

Mr. Robson presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he and his wife were disappointed that neither staff nor Michael Frye, Supervisor, could issue an interpretation based on the approved Resolution from the first hearing.

Mr. Hammack asked the applicant if this was the same application as the first hearing. Mr. Robson replied that it was.

Mr. Hammack asked staff why the application had to be heard again. Susan Langdon, Chief, Special Permit and Variance Branch, explained, that as the front yard requirement was inadvertently left out of the first application and the case needed to be re-advertised and there needed to be a new public hearing.

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

Mr. Hammack moved to approve SPA 01-Y-029 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN ROBSON, SPA 01-Y-029 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirement for certain R-C lots to permit construction of addition 26.5 ft. from front lot line. Located at 6511 Trillium House La. on approx. 13,006 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (2) 49. 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 27, 2001; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

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

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

1. This Special Permit is approved for the location of a second-story room addition as shown on the plat prepared by Susan Robson, dated March 29, 2001, and stamp dated October 25, 2001, as



submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hart recused himself from the public hearing and Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 2001.

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Page 057 November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M.           CLAIRE M. HIX, VC 01-V-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from rear lot line. Located at 8005 Lady Lewis Ct. on approx. 11,767 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-2 ((6)) 173.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Claire Hix, 8005 Lady Lewis Court, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an addition 8.7 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 16.3 feet was requested.

Ms. Hix presented the variance request as outlined in the statement of justification submitted with the application. She stated that the variance request was to add a master bedroom and bathroom with handicap access. She said that the way the house was situated on the lot required a variance in order to construct the addition.

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

Mr. Hart moved to approve VC 01-V-148 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CLAIRE M. HIX, VC 01-V-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from rear lot line. Located at 8005 Lady Lewis Ct. on approx. 11,767 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-2 ((6)) 173. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 27, 2001; 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 the granting of a variance.
3. The lot is of a strange shape.
4. The house is set at a 45 degree angle to the lot lines meaning that any addition on the corner of it is going to be close to some lot line in one direction or another.
5. The way that the addition is placed is the logical location for an addition on the house.
6. The variance will not have any negative impacts on the neighboring properties.
7. The Board has taken a similar position for variances in this community in the past.
8. The property backs up to open space.

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

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

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

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

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

1. This variance is approved for the location of an addition, shown on the plat prepared by Kenneth W. White, dated December 4, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mr. Pammel was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 059, November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. PHUONG DAVIDSON, VC 01-L-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 0.5 ft. from rear lot line Located at 6204 Sage Dr. on approx. 2,283 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-1 ((26)) 95A.

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 Davidson, 6204 Sage Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a deck to be located 0.5 feet from the rear lot line. The Zoning Ordinance permits decks to extend as close as two feet from the required rear yard; therefore, a variance of 1.5 feet was requested.

Mr. Davidson presented the variance request as outlined in the statement of justification submitted with the application. He stated that the neighbors most directly affected by the variance request were in support of the application.

Mr. Hammack asked the applicant to illustrate the layout of the deck with relation to the home. Mr. Davidson complied.

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

Mr. Ribble moved to approve VC 01-L-149 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHUONG DAVIDSON, VC 01-L-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 0.5 ft. from rear lot line Located at 6204 Sage Dr. on approx. 2,283 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-1 ((26)) 95A. 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 27, 2001; 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 indicating compliance with the required standards for the granting of a variance.
3. The property has a shallow rear yard and is a corner 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 deck, shown on the plat prepared by Paul B. Johnson, dated June 27, 2001, as revised through June 28, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Page 061, November 27, 2001, (Tape 1), PHUONG DAVIDSON, VC 01-L-149, continued from Page 060

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 December 5, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 061, November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JAMES MOELLER & MARSHA MACBRIDE, VC 01-D-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1219 Earnestine St. on approx. 15,300 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 13. (admin moved from 10/2/01 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. Marsha MacBride and James Moeller, 1219 Earnestine Street, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested approval of a variance to permit the construction of a garage addition built over and extending beyond an existing carport to be located 8.0 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 4.0 feet was requested.

Ms. MacBride presented the variance request as outlined in the statement of justification submitted with the application. She stated their request was to enlarge and enclose an existing carport to make a single car garage. She explained that the other side of the property had a severe slope into a large storm drainage area. She said that the only area on the property to construct the garage was where proposed.

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

Ms. Gibb moved to approve VC 01-D-117 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES MOELLER & MARSHA MACBRIDE, VC 01-D-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1219 Earnestine St. on approx. 15,300 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 13. (admin moved from 10/2/01 for notices) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' testimony and statement of justification indicated compliance with the required standards for the granting of a variance.
3. The variance request is modest.
4. The garage cannot be constructed on the other side of the property because of topography and an existing storm drainage easement with concrete in 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 a garage addition, shown on the plat prepared by Leslie Schuermann, dated April 10, 2001, as revised through July 10, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 063 November 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JOHN P. EMERY, VC 01-L-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from side lot line. Located at 5535 Dunsmore Rd. on approx. 10,799 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 48. (Moved from 10/30 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. Michael Eaton, 5535 Dunsmore Road, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to enclose an existing carport located 9.7 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 2.3 feet was requested.

Mr. Eaton, agent for the applicant, presented the variance request as outlined in the statement of justification. He stated that the addition would be architecturally compatible with the existing dwelling and they were proposing to enclose an existing two-car carport to make a two-car garage. He stated that there was full neighborhood support.

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

Mr. Kelley moved to approve VC 01-L-131 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN P. EMERY, VC 01-L-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from side lot line. Located at 5535 Dunsmore Rd. on approx. 10,799 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 48. (Administratively Moved from 10/30 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 November 27, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant's testimony and statement of justification indicated compliance with the required standards for the granting of a variance.

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

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

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

1. This variance is approved for an addition, shown on the plat prepared by George O' Quinn, dated July 10, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 2001. This date shall be deemed to be the final approval date of this variance.

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Page ~~064~~ November 27, 2001, (Tape 1) Scheduled case of:

9:30 A.M. GLADIS ONDINA DIAZ AND RAMIRO AREVALO, A 2001-LE-027 Appl. under Sect(s)18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard/storage yard use on the subject property in violation of various Zoning Ordinance provisions. Located at 7804 Cinder Bed Rd. on approx. 1.0 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 14.

William E. Shoup, Deputy Zoning Administrator, explained that the appellant had not met the notice requirements. He explained that Ms. Diaz had come to the office on the previous day accompanied by Mr. Cifuentes, another appellant for a similar appeal, and submitted a deferral request. He stated that Mrs. Diaz and Mr. Cifuentes were the owners of two properties in the same area that were in violation for having junkyards. He suggested that as the two cases were so similar, if it was the intent of the BZA to defer the appeal, that the appeals be heard on the same day. He stated that the Cifuentes appeal was scheduled for



Page ~~065~~ November 27, 2001, (Tape 1), GLADIS ONDINA DIAZ AND RAMIRO AREVALO, A 2001-LE-027, continued from Page ~~064~~

January 8, 2002.

The Board requested that staff send a letter to the appellant by certified return receipt notifying her that the hearing would go forward on January 8, 2002, at 9:30 a.m. whether she was present or not, that she was responsible for meeting the notice requirements and if those requirements were not met the appeal could be dismissed.

Mr. Hammack moved to defer A 2001-LE-027 to January 8, 2002, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page ~~065~~ November 27, 2001, (Tape 1) Scheduled case of:

9:30 A.M. ROBERT A. JERUSSI, A 2001-PR-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a shed no greater than 8 1/2 ft. in height may be allowed to be placed on a plateau area on the property that is contiguous to the rear of the appellant's property provided that shed is located a minimum of two feet from the outer edge of the plateau area. Located at 9137 Leghorn Pl. on approx. 11,115 sq. ft. of land zoned R-3. Providence District. Tax Map 58-2 ((10)) 53.

John Bell, Zoning Administration, presented the appeal as contained in the staff report. The appellant was the owner of the property located at 3311 Midland Road, which adjoined the referenced property at the rear lot lines of both properties. The subject of the appeal was a determination by the Zoning Administrator that an accessory storage structure, a shed, no greater than 8.5 feet in height, be located on a plateau area on the subject property that was contiguous to the rear of the appellant's property, provided that the shed was located a minimum of 2.0 feet of the plateau area.

The referenced property was the subject of an earlier Notice of Violation that was issued to the property owners for having a shed that exceeded 8.5 feet in height and did not meet the location requirements set forth in the Zoning Ordinance. The property owners filed an appeal of that determination and subsequently applied for a special permit for an error in building location to allow the shed to remain. The special permit application was denied and the property owners withdrew their appeal and the shed was later removed from the property. The property owners requested a formal interpretation from the Zoning Administrator to determine where a shed could be located on the existing plateau area and how tall it could be. That determination was the subject of this appeal by the adjacent property owner.

Mr. Hart questioned staff with regard to the applicability of Sect. 2-601 of the Zoning Ordinance, which referenced the addition or removal of sod and soil and the limitation that no more than 18 inches of fill may be added. He questioned whether the platform at issue in the appeal was permitted under Paragraph 1 of that section. William E. Shoup, Deputy Zoning Administrator, replied that the platform was permitted under Paragraph 1 due to the amount of built up area that existed.

Mr. Hart asked if there was any other guidance in the Ordinance, aside from Paragraph 1, which indicated where the 18-inch measurement could be taken. Mr. Shoup replied that there was not.

Mr. Hart asked if the 2-foot setback referenced in the interpretation was taken from the Ordinance or if the Zoning Administrator determined it. Mr. Shoup explained that the 2-foot setback was implemented by the Zoning Administrator to keep with the intent of the determination that there had to be an established grade around the perimeter walls of any shed.

Paul McAdam, Senior Zoning Inspector, explained how the measurements of the platform were taken. He said that the highest point of the plateau was approximately 19 inches.

Ms. Gibb asked the height of the fence. Mr. McAdam replied that it was 6 feet in height.

Robert Jerussi, appellant, explained the history of the referenced property beginning with the original shed that was denied by the Board and removed from the property. He stated that the interpretation was in

violation of the Zoning Ordinance. He questioned the validity of the word "plateau" with regard to the Zoning Ordinance. He stated that the plateau was actually a platform for which to place a shed. He stated that the height of the structure should be measured from the lowest part of the slope underneath the platform area to the highest point of the shed. He stated that the interpretation had no merit because there were no setback provisions in the Zoning Ordinance for fences. He suggested that the interpretation subverted the Board's decision to deny the special permit. Mr. Jerussi stated that there were many other locations on the property to place a shed. He stated that a shed 8.5 feet in height located on top of the platform area would extend 5.0 feet over the 6.0 foot fence to the rear of his property. He requested that the Board reverse the decision of the Zoning Administrator.

Chairman DiGiulian called for speakers.

Norman Neiss, 9106 Glen Brooke Road, came forward to speak. He stated that he was the Architectural and Environmental Review Committee Chairman for the Mantua Citizens Association. He stated that upon the denial of the special permit request Mr. May approached him and asked for suggestions as to where to locate a shed on his property. He stated that he suggested several different areas on the property to locate the shed and Mr. May was not receptive to any of them.

John McBride, agent for Cheryl and Bill May, (owners of the property that was the subject of the appeal) came forward to speak. He stated in an effort to improve and level off the rear portion of their property the Mays installed 16 inches of fill along the common property line. He stated that the Mays were aware that the County had measured 19 inches of fill and assured the Board that before any construction would take place there would be a maximum of 18 inches of fill to conform with the Zoning Ordinance. He explained that the fill would have grass over the top and there would be landscaping in the front and to the rear of the shed. He said that the proposed shed would be a salt box design and the lowest part of the roof, which was closest to the appellant's property, would be 6.0 feet in height. He submitted that the interpretation was consistent with interpretations regarding other structures such as fences and it was consistent with the definition of building height in the Zoning Ordinance which mandated that the measurement be taken from the top of the structure down to the finished grade. He explained that the reason for the minimum of two feet on either side of the structure was to have two feet of finished grade after the leveling of the property. He said that the Zoning Administrator was consistent with the Zoning Ordinance provisions while rendering the interpretation. Ms. Gibb asked for clarification that the shed would start two feet in from the cement blocks and it was not sitting on the edge of the plateau. Mr. McBride replied that was correct.

Ms. Gibb asked staff for clarification that as long as a fence was set back from a retaining wall then the wall was not considered a part of the height measurement. Mr. Shoup replied that was correct.

Mr. Shoup disagreed with the appellant's suggestion that the interpretation subverted the Board's denial of the special permit for the Mays. He explained that there was a different set of circumstances because there was an existing shed that was clearly over 8.5 feet in height. He said it was not uncommon for people with uneven lots to level off and build up an area to construct a shed. He explained that two feet in from the edges of the built up area was considered an established grade to measure from.

Mr. Hart asked for confirmation that the maximum height limitation of 8.5 feet had to include any foundation that was above the established grade. Mr. Shoup replied that was correct. Mr. Hart asked why the 2 foot set back was required. Mr. Shoup replied that it was required to ensure that there was a perimeter around the structure and a grade to measure from.

Mr. Hammack asked if Mr. May needed a grading permit to grade the area of the property that was filled. Mr. Shoup replied that the grading that was established on the property was in accordance with Paragraph 1 of the Zoning Ordinance.

Mr. Jerussi, in his rebuttal, contended that the Mays had not regraded the property but had constructed a platform to place a shed. He stated that the interpretation had no merit because there were no setback provisions in the Zoning Ordinance for fences. He contended that the placement gravel, cinder blocks, and rocks did not constitute a regrading of property.

Chairman DiGiulian stated that the height of the shed would be two feet higher than it would be if it were placed on the original grade. Mr. Shoup stated that people had the right to level their property without being

held to the original grade with regard to the measurement for a structure.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that the Zoning Administrator had the specific authority to create an exception for a shed that was located on a fill area. He stated that the appellant's photographs and testimony indicated that the fill was more than 18 inches. He stated that the two-foot set back description in the interpretation would negate the need for a special permit in many cases.

Mr. Hart moved to reverse the decision of the Zoning Administrator.

Mr. Hammack seconded the motion for the purposes of discussion. He stated that he agreed with Mr. Hart's comments with regard to the two-foot set back. He stated that he was not opposed to the construction of the shed or the height of the shed. He said that the two-foot set back was arbitrary and not supported by the Zoning Ordinance.

Mr. Hammack moved to reverse the determination of the Zoning Administrator in part with respect to the two-foot set back.

Ms. Gibb stated that the Zoning Administrator was correct in the direction of the interpretation with regard to this specific case.

Mr. Hart stated that the determination that the Zoning Administrator made needed to be made by the Board of Zoning Appeals in the process of a special permit.

The motion made by Mr. Hart failed by 1-5 for a lack of four votes. Chairman DiGiulian, Ms. Gibb, Mr. Hammack, Mr. Kelley and Mr. Ribble voted against the motion.

Mr. Hart stated that the effect of the motion made by Mr. Hammack allowed the shed to be constructed without a two-foot setback.

Mrs. Gibb seconded the motion made by Mr. Hammack and that motion failed by 1-5 for a lack of four votes. Chairman DiGiulian, Ms. Gibb, Mr. Hart, Mr. Kelley and Mr. Ribble voted against the motion.

Ms. Gibb stated that the interpretation was consistent with past decisions with regard to fences. She said that the decision was a reasonable attempt by the Zoning Administrator to interpret the Zoning Ordinance with respect to allowable fill and measuring grade at its natural point and an effort to answer a direct question from a citizen. She said that the Zoning Administrator was specific in mandating where the shed could be placed and as to where the natural grade was.

Ms. Gibb moved to uphold the decision of the Zoning Administrator. Mr. Ribble seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Hart voted against the motion. Mr. Pammel was absent from the meeting.

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Approval of May 15, 2001 and June 12, 2001 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Request for Reconsideration  
Jonathan and Christine Gold, VC 01-D-142

Page 068 November 27, 2001, (Tape 1), After Agenda Item, continued from Page 067

There was no motion and the request was denied.

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Page 068 November 27, 2001, (Tape 1), After Agenda Item:

Approval of November 13, 2001 Resolutions

Mr. Hammack moved to approve the Resolutions. There was no second and the motion carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:35 p.m.

Minutes by: Lori M. Mallam

Approved on: April 16, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

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

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 4, 2001. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel; and John Ribble.

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

Page ~~069~~ December 4, 2001, (Tape 1) Scheduled case of:

9:00 A.M.        BRYAN AND STEFANIE HOLLOWAY, VC 01-B-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line. Located at 4210 Kilbourne Dr. on approx. 15,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 238.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephanie Holloway, 4210 Kilborne Drive, Fairfax, Virginia, replied that it was.

Denice Thomas, Rezoning and Special Facilities Branch, presented the variance request as contained in the staff report. She stated that the applicant requested a variance to permit construction of a garage addition to the dwelling to be located 6.5 feet from the side lot line. She said the Ordinance required a minimum side yard of 15 feet; therefore, a variance of 8.5 feet was requested.

Ms. Holloway presented the variance request as outlined in the statement of justification submitted with the application. She stated that the house was built in the 1960's and many homes were now adding garages. She said she felt the garage would deter vandalism and car theft and insure the security of their vehicles. Ms. Holloway stated that the addition would be a standard two-car garage, which would not be oversized and blend nicely with the structure of their home and the character of the neighborhood. She said the neighbor on the adjacent lot was in support of the application as she had no windows on that side of her house and that the other neighbors believed the garage would increase the value of their homes.

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

Mr. Pammel stated that he was concerned about the remaining side yard, which would be 6.5 feet. He asked Ms. Holloway if she would consider narrowing the garage from 22 feet to 20 feet.

Ms. Holloway replied that they had consulted with several builders, all of whom recommended the 22 feet. She said if the garage was any smaller, it would be difficult to access the cars, so they preferred to have the standard 22 foot width.

Mr. Pammel moved to approve VC 01-B-160 for the reasons noted in the Resolutions.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRYAN AND STEFANIE HOLLOWAY, VC 01-B-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line. Located at 4210 Kilbourne Dr. on approx. 15,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 238. 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 4, 2001; 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 prescribed standards for the granting of 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 the proposed garage shown on the plat prepared by Laura L. Scott of Laura Lee Scott Surveys, Inc., signed on September 21, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 071, December 4, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DAVID G. WILLIS, VC 01-V-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line and 22.9 ft. from rear lot line. Located at 1402 Middlebury Dr. on approx. 13,118 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((5)) (5) 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. David G. Willis, 1402 Middlebury Drive, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. She said the applicant sought approval of a variance to permit construction of a garage addition to the dwelling to be located 10.2 feet from the west side lot line and 22.9 feet from the rear lot line. She said the Ordinance required a minimum side yard of 12 feet and a rear yard of 25 feet; therefore, variances of 1.8 feet and 2.1 feet, respectively, were requested.

Mr. Willis presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to enlarge the existing single-car garage by building toward the back of the lot. He stated that when he obtained the first variance to build the garage, he had been unaware that there had been an error in the location of the residence on the property when the house was originally built in 1956. He said as a result of that, it was not possible to build on the lot without a variance.

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

Mr. Hammack moved to approve VC 01-V-150 for the reasons noted in the Resolutions.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

DAVID G. WILLIS, VC 01-V-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line and 22.9 ft. from rear lot line. Located at 1402 Middlebury Dr. on approx. 13,118 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((5)) (5) 11A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 2001; and

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

1. The applicant is the owner of the land.
2. The applicants have presented testimony indicating compliance with the prescribed standards for the granting of a variance.
3. The applicant previously had been granted a special permit for a one-car garage in this location.
4. The requested variance is to extend the garage along the same lot line with no greater encroachment than previously approved.
5. The requested variance is minimal.

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Sam Whitson, L.S., dated September 5, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 073 December 4, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TED AND DOLORES SHINE, VC 01-D-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line. Located at 1813 MacArthur Dr. on approx. 10,022 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 134.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Bittner, Agent, 2965 Chain Bridge Road, Oakton, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant sought approval of a variance to permit construction of a two-story addition to the dwelling to be located 7.9 feet from the south side lot line. She said the Ordinance required a minimum side yard of 15 feet; therefore, a variance of 7.1 feet was requested.

Mr. Bittner presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was exceptionally narrow and had been built prior to the Zoning Ordinance in 1954. He said the property was only 76 feet wide and the house had been built exactly in the middle of the lot with 19.9 feet on each side allowing for very little expansion. He stated that the house had no dining room and that was the main purpose for the addition.

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

Mr. Hart moved to approve VC 01-D-152 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TED AND DOLORES SHINE, VC 01-D-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line. Located at 1813 MacArthur Dr. on approx. 10,022 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 134. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 2001; 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 prescribed standards for the granting of a variance.
3. The lot is very narrow, measuring 76 feet wide.
4. The house is located in the exact center of the lot and any expansion to the house would need a variance.
5. The variance requested is very similar to many that have been granted in the neighborhood.
6. The granting of the variance would pose no impact on the adjacent neighbor, as the house is 23 feet from the shared 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 two-story addition shown on the plat prepared by Advance Structural Concepts, Inc., dated April 3, 2001, as revised through September 18, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 074 December 4, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DAVID L. & SANDRA J. GIDDENS, VC 01-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 7921 Tire Swing Rd. on approx. 13,402 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-4 ((45)) 16. (Admin moved from 10/23/01 for notices)

Chairman DiGiulian stated that VC 01-P-129 had been administratively moved to February 19, 2002, per the applicants' request.

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9:00 A.M. JOE & SALLY DEVYLDER, VC 01-P-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. from rear lot line. Located at 8702 Coldstream Pl. on approx. 8,995 sq. ft. of land zoned PDH-3 and HC. Providence District. Tax Map 39-1 ((19)) (2) 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charlie Fitzgerald, Agent, 8505 Lee Highway, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant sought a variance to permit construction of a screened deck 19.5 feet from the rear lot line. She said the Zoning Ordinance required a minimum rear yard of 25 feet; therefore, a variance of 5.5 feet was requested.

Mr. Fitzgerald presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was only 8,900 square feet, which was smaller than the surrounding lots. He said that the lot was oddly shaped lot and the land sloped in such a way that a screened porch was needed to allow further use of their property. Mr. Fitzgerald said there was already an existing deck which they would screen.

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

Mr. Ribble moved to approve VC 01-P-151 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOE & SALLY DEVYLDER, VC 01-P-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. from rear lot line. Located at 8702 Coldstream Pl. on approx. 8,995 sq. ft. of land zoned PDH-3 and HC. Providence District. Tax Map 39-1 ((19)) (2) 25. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 2001; 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 prescribed standards for the granting of a variance.
3. The lot has an exceptional shape and exceptional topographic conditions.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the location of an addition, shown on the plat prepared by Paciulli, Simmons and Associates, Ltd., dated May 20, 1981, as revised through August 2, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 076 December 4, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JAMES D. & CHRISTINE B. BRADLEY, SP 01-B-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit shed to remain 3.5 ft. from side lot line. Located at 4959 Sabra

La. on approx. 13,479 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 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. James and Christine Bradley, 4959 Sabre Lane, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. He stated that the applicant sought a special permit for the reduction of minimum yard requirements based on an error in building location to allow an accessory storage structure to remain 3.5 feet from the side lot line. He said the minimum side yard requirement was 12 feet; therefore, a modification of 8.5 feet for the side yard was requested.

Mr. Bradley presented the special permit request as outlined in the statement of justification submitted with the application. He stated that their house had been built in the 1960's without a garage, and due to the design of the home, there was very limited storage space. He stated that the previous owner had built a 10 foot by 10 foot shed on the back of their property for storage purposes. Mr. Bradley said that he and his wife had previously discussed their intention to move the shed to the side yard with their neighbors, Omar and Jennifer Chicone, and at that time they did not have any objections.

Ms. Gibb stated that, in his statement of justification, Mr. Bradley moved the shed because of drainage problems in that area, even with a retaining wall had been built. She asked if there had been any other place in the backyard for the shed to be placed. Mr. Bradley replied that his backyard was very narrow and he would have the same problem with drainage if the shed were placed anywhere else in the backyard. Ms. Bradley stated that the backyard was short and the land sloped upward towards the neighbor on the adjacent lot.

Ms. Gibb asked for clarification of where the shed had previously been located. Ms. Bradley explained that the original owners had put in an 8 foot by 8 foot concrete slab for a shed, then upsized the shed to a 10 foot by 10 foot shed before selling the house. She said when she and her husband purchased the house, the shed conveyed. She said that the shed straddled the concrete pad and dug into the back hillside to accommodate the size of the shed.

Ms. Gibb asked if they had seen the letters that had been submitted to the Board, including the one from the owners of Lot 38. Mr. Bradley replied that he had seen the letters, and believed that the one in opposition was the landowner directly across the street from them on Lot 38.

Mr. Hart asked Mr. Bradley about moving the shed back to the original site. Mr. Bradley stated that they did not want to do that because of the cost and the shed would take up most of the backyard. He further explained that he did know of any problems with the side lot when he decided to move the shed.

Mr. Hart clarified with Susan Langdon, Chief, Special Permits and Variance Branch, the different options if the shed were placed elsewhere on the property due to its large size.

Ms. Gibb asked if this special permit request was due to a complaint and Mr. Bernal replied that it was.

Chairman DiGiulian called for speakers.

James Cole, 4955 Sabre Lane, came forward to speak in support of the application. He stated that he felt the Bradley's had enhanced the beauty of the neighborhood by placing additional shrubs and trees. He said he did not have a problem with the shed on the side of the property.

Omar Chicone, 4940 Red Fox Drive, came forward to speak in opposition to the application. He said that neither he, nor his wife, had been contacted by the Bradleys about the shed. He said that looking out from their kitchen window, the shed appeared to be a very large eyesore. He said the Bradleys had been diligent in landscaping their yard; however, he felt the shed was a detriment to the community.

Damian Bartholomew, 4937 Red Fox Drive, came forward to speak in opposition to the application. He stated that the view of the shed from his living room was quite dramatic because the shed was quite prominent. He said he felt it wasn't an acceptable use of that area and detracted from the value of the

adjacent homes and neighborhood in general. He stated that the President of the Homeowners Association, who was not able to be present for the hearing, contacted the Bradleys to let them know that their shed was not in compliance with the HOA. He said it was at that time that the Bradleys applied for a variance.

Mr. Bradley stated in his rebuttal that the President of the Homeowners Association had not notified him of any problems. He said he had not been notified of any complaints until Mr. Griggs, Zoning Enforcement, came to their house to verify measurements of the shed and its placement due to the complaint. He said Mr. Griggs advised Mrs. Bradley at that time of the problem and the complaint filed.

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

Ms. Gibb moved to deny SP 01-B-052 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES D. & CHRISTINE B. BRADLEY, SP 01-B-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit shed to remain 3.5 ft. from side lot line. Located at 4959 Sabra La. on approx. 13,479 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 37. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants have not presented testimony indicating compliance with the prescribed standards for the granting of a special permit.
3. The error in building and non-compliance was done in good faith; however, the application would be detrimental to the use and enjoyment of other property in the immediate vicinity.
4. The shed is too large and imposing for the location.
5. The shed is not in harmony with the neighborhood.
6. The shed creates a negative impact on 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. 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 December 12, 2001.

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Page 079 December 4, 2001, (Tape 1) Scheduled case of:

9:00 A.M. BRIAN MADDIX AND LAURA CANNON MADDIX, VC 01-V-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 0.19 ft. from rear lot line. Located at 9226 Lee Masey Dr. on approx. 3,042 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-4 ((20)) (J) 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. Laura Cannon-Maddix, 9226 Lee Masey Drive, Lorton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of an addition to the deck to be located 0.19 feet from the rear lot line. He said the minimum rear yard requirement was 6.2 feet, with a permitted extension of 1.2 feet into the minimum rear yard; therefore, a variance of 4.81 feet was requested for the proposed 9 foot high deck.

Ms. Maddix presented the variance request as outlined in the statement of justification submitted with the application. She stated that she and her husband sought the variance due to the exceptional shallowness of their property. She said they had signed a contract prior to construction of their home, which included a 12 foot by 20 foot deck. She stated that they put in a change request with the builder in September incorporating some upgrades that were offset by a request to drop the deck, which the builder agreed to do.

Ms. Maddix stated that she and her husband had been completely unaware of the true dimensions of their lot when they purchased their home and had not realized there would be problems in building a deck of the same size in the future. She said they discovered the actual lot size later when a deck builder inquired about property lines. She said they had contacted their builder and found that the rear lot line was much closer to the house than they had realized.

Ms. Maddix stated that most houses of the same model homes had significantly deeper lots than theirs. She said she felt the deck would not be detrimental to the neighbors, and that most of the land that was adjacent to them was flood plain. She said the deck would be in keeping with the character of the neighborhood and she submitted a signed letter of support from her neighbors.

Mr. Hammack said he had a problem with placing a deck that close to the lot line and asked if she would consider something smaller. Ms. Maddix replied that a smaller deck would be better than no deck.

Chairman DiGiulian called for speakers.

Lori Frost-Wilson, Planning Commission member, came forward to speak in opposition to the application. She stated that she felt the applicants had not demonstrated the need for a variance by either a hardship or some extraordinary condition of the property.

Ms. Gibb asked staff if the land behind the subject property was part of the Homeowners Association common area. Susan Langdon, Chief, Special Permit and Variance Branch, replied that Pohick Creek ran through that area, and a portion of it was flood plain.

Ms. Maddix stated in her rebuttal that she had been unaware of any opposition to her application. She said that the Lorton Station Homeowners Association did not allow a deck to be built unless it met Fairfax County zoning requirements, and that was why they had requested the variance. She said there were other houses in their neighborhood with very shallow lots, but most of them had patios because the back of the houses were at ground level. Ms. Maddix stated that her situation was different due to the type of model of home they bought.

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

Mr. Kelley moved to deny VC 01-V-169 for the reasons noted in the Resolution.

Ms. Gibb stated that she could not support the motion because she believed that the lot was quite shallow, backed onto Homeowners Association property, and was bought in good faith.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

BRIAN MADDIX AND LAURA CANNON MADDIX, VC 01-V-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 0.19 ft. from rear lot line. Located at 9226 Lee Masey Dr. on approx. 3,042 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-4 ((20)) (J) 17. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants have not presented testimony indicating compliance with the prescribed standards for the granting of a variance.
3. The homeowners association will not approve the addition without BZA approval.
4. There is not an undue hardship.
5. Approval of the deck would set a precedent.

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 081, December 4, 2001, (Tape 1), BRIAN MADDIX AND LAURA CANNON MADDIX, VC 01-V-169, continued from Page 080

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

Mr. Hammack seconded the motion which carried by a vote of 6-1. Ms. Gibb voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 2001. This date shall be deemed to be the final decision date of this variance.

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Page 081, December 4, 2001, (Tape 1 and 2) Scheduled case of:

9:00 A.M. TRUSTEES OF THE ANDREW CHAPEL UNITED METHODIST CHURCH, SPA 83-D-045-2  
Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-045 previously approved for a church with a child care center and nursery school to permit site modifications. Located at 1301 Trap Rd. on approx. 7.01 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 47. (In Association with SE 01-D-023 and 2232-D01-17).

Chairman DiGiulian stated that SPA 83-D-045-2 had requested a deferral

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the case had been in association with a Special Exception and a 22 32 for a monopole. She stated that public hearings for both the Planning Commission (PC) and the Board of Supervisors (BOS) in this case had been deferred, and therefore, the applicant had also requested that the special permit hearing be deferred until after the BOS hearing.

Mr. Hammack stated that the Board had incurred the same problem with the Dranesville Church, and he believed that after the Planning Commission and the BOS approved certain issues, people believed that the BZA should also give their approval, which had become a problem. He asked Ms. Langdon if they could go forward with the hearing.

Ms. Langdon stated that neither the applicant nor the staff coordinator was present. She explained that the SE and 22 32 usually met first in order to iron out many of the larger issues and then came forward for the special permit.

Mr. Hammack stated his displeasure at the BZA being third in line to hear issues, which were expected to be rubber stamped. He stated that he felt the BZA should act on the issues first, and it was very awkward for three bodies to decide one case. He stated that the case had been set for hearing, the staff had made a negative recommendation, and now the applicant asked for a deferral. He stated that he felt that was not right.

Mr. Hart stated that Joan DuBuois, Dranesville Planning Commissioner, had called him and she said that the hearing was set for March 21 rather than January or February. He said that he had discussed with her that he had not felt it was essential for the BZA to be first to hear the case.

Mr. Hart stated that he did believe that the BZA should not be third in these hearings. He said he had not been able to identify anything in the Ordinance that prioritized the order administratively or otherwise, and therefore, when an applicant filed for something that required a three-step hearing process, the BZA should not be the last to hear it. Ms. Langdon said that would be taken into consideration for future scheduling.

Mr. Kelley stated that he believed Ms. Rosati should have been present for the current hearing, and he felt she took a lot for granted by not showing up. He said there was a lot more work that needed to be done with respect to the application and felt she needed to be present to hear and address various issues.

Mr. Hammack moved that the hearing be deferred to February 12, 2002, at 9:00 a.m. Mr. Pammel seconded the motion which carried with a 7-0 vote.

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Page 082 December 4, 2001, (Tape 2) Scheduled case of:

9:30 A.M. TAVARES FAMILY L.P., A 2001-LE-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants must clear violations indicated in a Notice of Violation dated June 15, 2001, within 30 days of the date of the Notice. Located at 7805 Cinder Bed Rd. on approx. 21,780 sq. ft. of land zoned I-4. Lee District. Tax Map 99-2 ((1)) 22. (admin moved from 10/30/01)

9:30 A.M. TAVARES FAMILY L.P., A 2001-LE-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants must clear violations of the Zoning Ordinance as set forth in Notice of Violation dated August 9, 2001, within 60 days of the date of the Notice of Violation. Located at 7803 Cinder Bed Rd. on approx. 21,780 sq. ft. of land zoned I-4. Lee District. Tax Map 99-2 ((1)) 21.

Chairman DiGiulian stated that there was a deferral request for A 2001-LE-022 and A 2001-LE-028.

Mr. Hart made the disclosure that Mr. Flynn's partner was the Commissioner in Chancery in four cases that he had with Mr. Flynn. He said he did not believe it would affect his ability to participate in the case.

Mr. Hammack asked staff if they were in agreement with the deferral request. Barbara Byron, Director, replied that they were in agreement. Mr. Hammack made the motion to move both of the Tavares Family appeals to March 19, 2002, at 9:30 A.M. Mr. Pammel seconded the motion which carried with a 7-0 vote.

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Page 082 December 4, 2001, (Tape 2) Scheduled case of:

9:30 A.M. FAMILY ADVENTURES, INC., A 2001-SU-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing the temporary storage of approximately 250 new and previously owned vehicles on property in the C-8 District and that such is deemed a use most similar to a storage yard which is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 13955 Metrotech Dr. on approx. 15.21 ac. of land zoned C-8, HC and WS. Sully District. Tax Map 34-4 ((1)) 16E.

Chairman DiGiulian stated that there had been a withdrawal request for Family Adventures, Inc., appeal application A 2001-SU-030.

Mr. Hart moved to allow A 2001-SU-030 to be withdrawn. Mr. Hammack seconded the motion which carried with a 7-0 vote.

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Page 082 December 4, 2001, (Tape 2) After Agenda Item:

Additional Time Request  
Hoa Dinh Ngo, VC 97-L-112

Mr. Hart made a motion to grant additional time to VC 97-L-112 of 12 months to August 2, 2002, as recommended by staff. Mr. Hammack seconded the motion which carried with a 7-0 vote.

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Page 082 December 4, 2001, (Tape 2) After Agenda Item:

Additional Time Request  
Church Diocese of Newton for the Melkites in the United States of America  
SPA 80-D-069-2

Mr. Pammel made a motion to grant additional time to SPA 80-D-069-2 of 12 months to June 15, 2002, as recommended by staff. Mr. Hammack seconded the motion which carried with a 7-0 vote.

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Page 083 December 4, 2001, (Tape 2) After Agenda Item:

Approval of June 19, 2001 Minutes

Mr. Pammel made a motion to approve the June 19, 2001, Minutes. Mr. Hart seconded the motion which carried with a 7-0 vote.

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Page 083 December 4, 2001, (Tape 2) After Agenda Item:

Request for Reconsideration  
Nancy Wolynetz  
VC 01-P-147

Susan Langdon, Chief, Special Permit and Variance Branch, stated that Ms. Wolynetz and her agent were present to answer any questions that the Board may have regarding the reconsideration.

Chairman DiGiulian stated that a motion for reconsideration of VC 01-P-147 had not been made; therefore, the Board would not entertain the request.

Ms. Langdon stated that if the reconsideration was not granted, was to waive the 12 month wait period.

Mr. Hart moved to waive the one year wait period. Ms. Gibb seconded the motion which carried with a 7-0 vote.

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Page 083 December 4, 2001, (Tape 2) After Agenda Item:

Request for Reconsideration  
Kenneth & Ruby Krantz  
VC 01-V-145

Chairman DiGiulian stated that a motion for reconsideration of VC 01-V-145 had not been made; therefore, the Board would not entertain the request.

Mr. Hammack made a motion to waive the 12 month waiting period for VC 01-V-145. Mr. Hart seconded the motion. Mr. Kelley stated that he didn't have a problem with a waiver of a 12 month waiting period provided the applicant moved to the side of the dwelling and not the rear.

Mr. Hart stated that in the original discussions of this case was there was approximately 25 feet envelope to the side of the house in which an addition could be placed without any minimum side yard or rear yard problems. He said he had not supported the magnitude of what had originally been requested, and would like to see them push the addition more to the side of the dwelling.

The motion carried with a 6-1 vote. Mr. Kelley abstained from the vote.

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Page 083 December 4, 2001, (Tape 2) After Agenda Item:

Approval of November 27, 2001 Resolutions

Mr. Pammel moved to approve the November 27, 2001 resolutions. Ms. Gibb seconded the motion which carried with a 6-1. Mr. Kelley abstained from the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Judith A. Gobbi

Approved on: June 11, 2002

Regina Thorn Corbett

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 11, 2001. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; James Hart; Robert Kelley; and James Pammel. Paul Hammack and John Ribble were absent from the meeting.

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

Page 085 December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JOHN & KAREN FRIEDMAN, VC 01-B-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit of addition 5.7 ft. from side lot line such that side yards total 19.0 ft. Located at 8615 Canterbury Dr. on approx. 14,068 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-3 ((5)) 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. John and Karen Friedman, 8615 Canterbury Drive, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition to be located 5.7 feet from a side lot line such that side yards totaled 19.0 feet. A minimum side yard of 8 feet with total side yards of 20 feet is required; therefore, a variance of 2.3 feet was requested for the garage addition while a variance of 1.0 foot was requested for the total side yards.

Mr. Friedman presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose an existing carport. Mr. Friedman stated that there were no objections from the neighbors and submitted letters in support. He stated that they had obtained homeowners association approval and the construction would be compatible with the neighborhood.

Chairman DiGiulian asked if the garage would come closer to the lot line than the carport. Mr. Friedman replied no.

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

Mr. Pammel moved to approve VC 01-B-161 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN & KAREN FRIEDMAN, VC 01-B-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit of addition 5.7 ft. from side lot line such that side yards total 19.0 ft. Located at 8615 Canterbury Dr. on approx. 14,068 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-3 ((5)) 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 December 11, 2001; and

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

1. The applicants are the owners of the land.
2. The request is reasonable and nominal.
3. The addition would be no closer to the lot line than the existing carport.
4. The setback from the side yard will be in excess of 5 feet.
5. The existing width of the proposed garage is less than 19 feet.

6. The width of the lot at the front property line is narrower than the rear, which causes a hardship.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by Richard J. Cronin, dated August 29, 2001, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hart seconded the motion which carried by a vote of 4-0-1. Ms. Gibb abstained from the vote. Mr. Hammack and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 19, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BRUCE GRANT & GIGI SCHNEPPAT, VC 01-V-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.9 ft. from rear lot line. Located at 9110 Meadowcreek La. on approx. 14,155 sq. ft. of land zoned PDH-1. Mt. Vernon District. Tax Map 106-2 ((9)) 47.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bruce Grant and Gigi Schneppat, 9110 Meadowcreek Lane, Lorton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a sunroom addition to be located 12.9 feet from the rear lot line. A minimum rear yard requirement of 25 feet is required; therefore, a variance of 12.1 feet was requested.

Mr. Grant presented the variance request as outlined in the statement of justification submitted with the application. He said the addition would be the same footprint as the existing deck. Mr. Grant stated that they requested to enclose the existing deck to provide privacy because Route 123 would be widened and a shopping center was being built near their home.

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

Ms. Gibb moved to approve VC 01-V-156 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

BRUCE GRANT & GIGI SCHNEPPAT, VC 01-V-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.9 ft. from rear lot line. Located at 9110 Meadowcreek La. on approx. 14,155 sq. ft. of land zoned PDH-1. Mt. Vernon District. Tax Map 106-2 ((9)) 47. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' testimony and a statement of justification which indicated compliance with the required standards for a variance.
3. Only one corner of the deck required the variance.
4. There is substantially more room for the rest of the addition through the back of the property.
5. The property backs up to commercial property so the impact would be minimal.

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

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

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

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

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

1. This variance is approved for the location of a sunroom addition as shown on the plat prepared by Jeffery D. Warner, dated July 13, 2001, as revised through August 31, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Hart recused himself from the meeting. Mr. Ribble 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 19, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 089 December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PAUL J. & DIANE S. BRENNAN, VC 01-B-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence higher than 4 ft. to remain in front yard of a corner lot and higher than 7 ft. to remain in side yard. Located at 5618 Heming Ave. on approx. 14,146 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (69) 7A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul and Diane Brennan, 5618 Heming Avenue, 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 a fence higher than 4 feet in height to remain in the front yards of a corner lot and a fence higher than 7.0 feet in height to remain in a side yard. The Zoning Ordinance permits a maximum fence height of 4 feet in any front yard and a maximum fence height of 7 feet in any side yard. Therefore, a variance of 2.0 feet for the fence height along the front yard and a variance of 0.8 feet for the side yard were requested for the existing fences.

Ms. Brennan presented the variance request as outlined in the statement of justification submitted with the application. She said the grade difference in the side yard area was about 18 inches that sloped downward; therefore, the contractor built a small retaining wall to bring the land up to grade and attached the fence to the wall. Ms. Brennan stated that by bringing the land up to grade they had improved the drainage in that area and the usability of the area. She said the fence also provided an area for them to store their garbage containers where they would not be in full view of the neighborhood. Ms. Brennan presented before and after photographs of the property to the Board. She said they had 3 major situations for constructing a six foot fence. Ms. Brennan stated that their house had been broken into by someone who had gained access from that side of the yard. She said the 6-foot fence would provide safety for their small child and the corner of Heming Avenue and Queensberry Avenue was a very busy through-way for traffic with two bus stops. She stated that the neighbor who complained had demonstrated contempt for them and she had witnessed the neighbor on their property. Ms. Brennan said the fence would provide seclusion from those neighbors. She said the fence was not an eyesore and it did not impact sight distance. Ms. Brennan said she had received positive comments from most neighbors. She requested a waiver of the 8-day waiting period.

Mr. Pammel asked which lot made the complaint. Ms. Brennan replied Lot 6.

Chairman DiGiulian asked how high was the retaining wall. Ms. Brennan replied 20 inches.

Mr. Hart asked where the bus stop was located. Ms. Brennan replied that the bus stop was in front of the home.

Mr. Hart asked which fence was the complaint about. Beck Halstead, Zoning Inspector, stated that the complaint was about the fence with the retaining wall.

Chairman DiGiulian called for speakers.

Robert Michelan, 5616 Heming Avenue, came forward to speak in opposition. He submitted a letter from the North Springfield Civic Association. Mr. Michelan said the height of the wall and the fence was too high. He said he had never experienced any security problems. Mr. Michelan said the fence was an eyesore and a detriment to the neighborhood. He said there were other fences in the neighborhood that conformed to the 4 foot requirement.

Ms. Gibb asked if there were cypress trees planted, would Mr. Michelan still be in opposition. Mr. Michelan replied that he wasn't sure if there was room for the trees, but it would obstruct his view of the fence.

Ms. Brennan stated, in her rebuttal, that their house had been broken into. She said they had people loitering in their yard and the fence would provide safety for their child and dog. Ms. Brennan said the drainage had been improved.

Mr. Kelley asked about the letter from the civic association. Mr. Brennan stated that he thought their charter was expired and there was no homeowners association.

Mr. Hart moved to approve VC 01-B-153 for the reasons noted in the Resolution.

Mr. Hart stated that the BZA decisions did not negate civic association regulations. He said the BZA only focused on the regulations of the Zoning Ordinance.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

PAUL J. & DIANE S. BRENNAN, VC 01-B-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence higher than 4 ft. to remain in front yard of a corner lot and higher than 7 ft. to remain in side yard. Located at 5618 Heming Ave. on approx. 14,146 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (69) 7A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The fence is attractively landscaped and is setback from the sidewalk a considerable distance.
4. Queensberry Street is a fairly busy street with a bus stop.
5. With the topography, landscaping, and the way the fence is positioned, there would be no negative impact on the neighbors.
6. What the applicants could build by right would be less attractive than what they have already built.
7. The change in topography from the driveway to the side of the yard makes it appropriate to have the retaining wall.
8. The fence helps conceal the backyard and the screened porch would be more separated from Lot 6.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 fences as shown on the plat prepared by Charles E. Janson, dated August 24, 2001, and signed August 27, 2001, as submitted with this application and is not transferable to other land.

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

Ms. Gibb seconded the motion which carried by a vote of 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were absent from the meeting

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 091, December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. L. BRENT AND NORMA P. BOZELL, VC 01-V-172 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less and a 5.0 ft. high fence in a front yard. Located at 4749 Neptune Dr. on approx. 33,134 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (L) 4.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. L. Brent and Norma Bozell, 4749 Neptune Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure, a pool, in the front yard of a lot containing 36,000 square feet or less. The applicant also requested a variance for a 5-foot high fence in a front yard. The maximum fence height is 4 feet in a front yard; therefore, a variance of 1.0 foot was requested.

Mr. Bozell presented the variance request as outlined in the statement of justification submitted with the application. He said they purchased the property with the intent on building a pool. Mr. Bozell said the lot was heavily wooded and had 3 front yards. He said all the neighbors were in support of the application.

Mr. Hart asked whether Lot 12 supported the application. Mr. Bozell replied yes.

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

Mr. Kelley moved to approve VC 01-V-172 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

L. BRENT AND NORMA P. BOZELL, VC 01-V-172 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less and a 5.0 ft. high fence in a front yard. Located at 4749 Neptune Dr. on approx. 33,134 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (L) 4. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2001; 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 standard for a variance as indicated in their well-written statement of justification.
3. The property has 3 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 and a 5.0 foot high fence, shown on the plat prepared by Laurie A. Perl, dated November 2, 2001, as revised through November 6, 2001,

submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 19, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 093 December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. HOWARD & DEBORAH DAUGHTRY, VC 01-S-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. from rear lot line. Located at 7211 Clifton Rd. on approx. 41,123 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 85-2 ((1)) 9A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Howard and Deborah Daughtry, 7211 Clifton Road, Clifton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 20 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 5 feet was requested.

Mr. Daughtry presented the variance request as outlined in the statement of justification submitted with the application. He said he had a pipestem lot with two front yards and if the yard was considered to be a side yard, he would meet the requirements. Mr. Daughtry requested a waiver of the 8-day waiting period.

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

Mr. Pammel moved to approve VC 01-S-155 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOWARD & DEBORAH DAUGHTRY, VC 01-S-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. from rear lot line. Located at 7211 Clifton Rd. on approx. 41,123 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 85-2 ((1)) 9A. 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 11, 2001; and

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

1. The applicants are the owners of the land.
2. There is a drainage field in the front yard, which produces a hardship for the applicants.
3. The applicants met the required standards for a variance.
4. The proposed location was a logical 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 addition, shown on the plat prepared by Charles J. Huntley, dated August 8, 2001 through August 10, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Page 095 December 11, 2001, (Tape 1), HOWARD & DEBORAH DAUGHTRY, VC 01-S-155, continued from Page 094

requested and an explanation of why additional time is required.

Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 095 December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MARK S. KOSTER AND KATHARINE R. MOUNTCASTLE, SP 01-V-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 a dwelling to remain 10.4 ft. from side lot line. Located at 7204 Burtonwood Dr. on approx. 18,170 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((4)) (3) 3. (Concurrent with VC 01-V-164).

9:00 A.M. MARK S. KOSTER AND KATHARINE R. MOUNTCASTLE, VC 01-V-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line. Located at 7204 Burtonwood Dr. on approx. 18,170 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((4)) (3) 3. (Concurrent with SP 01-V-058).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Katharine Mountcastle, 7204 Burtonwood Drive, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit a dwelling to remain 10.4 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, the amount of error was 1.6 feet. The applicant also requested a variance to permit the construction of an addition 10.4 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 1.6 feet was requested.

Carter Jones, the applicants' agent, presented the requests as outlined in the statement of justification submitted with the application. He said the applicants purchased the property with the intention of adding a 2<sup>nd</sup> story addition. Mr. Jones said the previous owner converted a carport into an enclosed porch in 1970. He said the 2<sup>nd</sup> story addition would stack exactly over the enclosed porch. Mr. Jones requested a waiver of the 8-day waiting period.

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

Mr. Hart moved to approve SP 01-V-058 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK S. KOSTER AND KATHARINE R. MOUNTCASTLE, SP 01-V-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 a dwelling to remain 10.4 ft. from side lot line. Located at 7204 Burtonwood Dr. on approx. 18,170 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((4)) (3) 3. (Concurrent with VC 01-V-164). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2001; 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, as shown on the plat prepared by Thomas G. Gilbert, dated September 25, 2001, revised through September 26, 2001, submitted with this application and is not transferable to other land.

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

Ms. Gibb seconded the motion which carried by a vote of 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 2001. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to approve VC 01-V-164 for the reasons noted in the Resolution.



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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARK S. KOSTER AND KATHARINE R. MOUNTCASTLE, VC 01-V-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line. Located at 7204 Burtonwood Dr. on approx. 18,170 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((4)) (3) 3. (Concurrent with SP 01-V-058). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' statement of justification and testimony indicated compliance with the required standards for a variance.
3. The proposed location is the most logical place to extend the house because it lines up with the foundation.
4. The second story has a fairly modest height and there would be no significant 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

Page 098, December 11, 2001, (Tape 1), MARK S. KOSTER AND KATHARINE R. MOUNTCASTLE, SP 01-V-058 and MARK S. KOSTER AND KATHARINE R. MOUNTCASTLE, VC 01-V-164, continued from Page 097

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

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

1. This variance is approved for the location of an addition, as shown on the plat prepared by Thomas G. Gilbert, dated September 25, 2001, revised through September 26, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion which carried by a vote of 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 098, December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. R. BRUCE AND DIANA L. HOLCOMB, VC 01-D-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from side lot line. Located at 7909 Old Falls Rd. on approx. 21,784 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 6.

Chairman DiGiulian noted that the application had been administratively moved to January 8, 2002.

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Page 098, December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY C. HOYT, VC 01-Y-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from front lot line and 21.0 ft. from rear lot line. Located at 12809 Gatepost Ct. on approx. 10,648 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 17. (Concurrent with SP 01-Y-056).

9:00 A.M. JEFFREY HOYT, SP 01-Y-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 shed to remain 4.0 ft. from side lot line. Located at 12809 Gatepost Ct. on approx. 10,648 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 17. (Concurrent with VC 01-Y-159).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeffrey C. Hoyt, 12809 Gatepost Court, Herndon, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction in minimum yard requirements based on an error in building location to permit a shed to remain 4.0 feet from the east side lot line. A minimum side yard of 8.0 feet is required; therefore, a modification of 4.0 feet was requested for the existing shed. The applicant also requested a variance to permit the construction of a one-story garage addition to the dwelling, to be located 18.0 feet from the front lot line and 21.0 feet from the rear lot line. A minimum front yard of 25 feet and a minimum rear yard of 25 feet are required; therefore, variances of 7.0 feet and 4.0 feet were requested respectively.

Ms. Gibb asked what would be the side yard requirement if there was not a pipestem driveway. Ms. Josiah replied that it would be 8 feet with a total side yard of 24 feet.

Mr. Hoyt presented the requests as outlined in the statement of justification submitted with the application. He said the shed was on the property when they purchased the house and it was used to store lawn equipment. Mr. Hoyt said since there was no garage, there was no other place on the property to store that equipment. He said the addition was requested to provide additional living space. Mr. Hoyt said approval of the variance would allow for single car garage, a family room, and additional storage space above the addition. He said the homeowners association approved the addition subject to approval of the variance. Mr. Hoyt stated that the neighbors supported the applications.

Mr. Hart asked if the shed was on a slab or was there a foundation. Mr. Hoyt replied that the shed was resting on large pieces of lumber.

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

Ms. Gibb moved to approve SP 01-Y-056 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY HOYT, SP 01-Y-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 shed to remain 4.0 ft. from side lot line. Located at 12809 Gatepost Ct. on approx. 10,648 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 17. (Concurrent with VC 01-Y-159). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2001; 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;

Page 100, December 11, 2001, (Tape 1), JEFFREY C. HOYT, VC 01-Y-159 and JEFFREY HOYT, SP 01-Y-056, continued from Page 099

- 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 shed shown on the plat prepared by Alexandria Surveys, Inc., dated April 25, 1994, as revised through September 20, 2001, by Jeffrey C. Hoyt, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 19, 2001. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 01-Y-159 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY C. HOYT, VC 01-Y-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from front lot line and 21.0 ft. from rear lot line. Located at 12809 Gatepost Ct. on approx. 10,648 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 17. (Concurrent with SP 01-Y-056). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2001; 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 oddly shaped.
4. Because of the pipestem driveway, the side yard requirements are more stringent.
5. Only one corner does not meet the 25-foot side yard requirement and requires the variance.
6. There is a storm drainage easement in the rear.
7. The addition is fairly well landscaped and a long distance from the neighboring property.

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

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

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

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

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

1. This variance is approved for the location of the one-story addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 25, 1994, as revised through September 20, 2001, by Jeffrey C. Hoyt, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Page 102 December 11, 2001, (Tape 1), JEFFREY C. HOYT, VC 01-Y-159 and JEFFREY HOYT, SP 01-Y-056, continued from Page 101

The request must specify 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. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 19, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 102 December 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. BALWANT S. GARCHA, SPA 93-M-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 4816 Montgomery St. on approx. 35,967 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((10)) 85.

Chairman DiGiulian noted that the application had been administratively moved to February 26, 2002.

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Page 102 December 11, 2001, (Tape 1), Scheduled case of:

9:30 A.M. EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9100 Furnance Rd. on approx. 7.67 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 23. (Def. from 12/5/00)(moved from 3/6/01) (Def. From 4/3/01) (Def from 10/2/01 for decision only)

Ms. Gibb recused herself from the public hearing because she represented the appellant's wife.

William Shoup, Deputy Zoning Administrator, stated that the appeal involved junkyard activity taking place on the property. He said the appeal had been deferred 4 times since last December to allow the appellant time to clean up the property. Mr. Shoup said the appellant had been making progress, but deferred to Mike Simms, Zoning Inspector, to give a summary of the progress he had observed.

Mr. Simms stated that after inspection on the property on December 10, 2001, he found that there had been tremendous progress in cleaning the property. He submitted photographs reflecting the progress made.

Mr. Shoup stated that while progress had been made, the lot still constituted a junkyard.

Roy Spence, the appellants' agent, came forward, stating that the appellant had made tremendous improvement with cleaning the property. He said 14 boxes of debris had been removed. Mr. Spence said there was a contract on the property to settle on or before April 23, 2002, with a clause indicating that Mr. Harris would clean the property. Mr. Spence requested a deferral for 60-90 days to provide the appellant with additional time to clean the property.

Mr. Shoup stated that staff concurred with a deferral to March 26, 2002, at 9:30 a.m.

Mr. Kelley moved to defer A 2000-MV-026 to March 26, 2002, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 4-0. Ms. Gibb recused herself from the meeting. Mr. Hammack and Mr. Ribble were absent from the meeting.

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Page 102 December 11, 2001, (Tape 1), Scheduled case of:

9:30 A.M. CLYDE W. PROFFITT, A 2001-LE-014 Appl. under Sect(s). 18-301 of the Zoning

Page 103 December 11, 2001, (Tape 1), CLYDE W. PROFFITT, A 2001-LE-014, continued from Page 102

Ordinance. Appeal of determination that appellant is maintaining two dwelling units on property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 3122 Clayborne Ave. on approx. 16,816 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (5) 27. (Admin moved from 8/14/01) (Def. from 9/18/01)

Chairman DiGiulian noted that the application had been administratively moved to February 26, 2002.

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Page 103 December 11, 2001, (Tape 1), After Agenda Item:

Approval of July 3, 2001 and July 24, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hart seconded the motion which carried by a vote of 4-0. Ms. Gibb was not present for the vote and Mr. Ribble and Mr. Hammack were absent from the meeting.

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Page 103 December 11, 2001, (Tape 1), After Agenda Item:

Request for Reconsideration  
Brian and Laura Maddix - VC 01-V-169

Mr. Pammel stated that he was not disposed to granting a reconsideration because he felt that less than a 1-foot setback to the property line was not a desirable precedent to set. He said he would be willing to waive the 12-month waiting period for refiling an application. Mr. Pammel moved to waive the 12-month waiting period. Mr. Hart seconded the motion which carried by a vote of 4-0. Ms. Gibb was not present for the vote and Mr. Ribble and Mr. Hammack were absent from the meeting.

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Page 103, December 11, 2001, (Tape 1), After Agenda Item:

Approval of December 4, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hart seconded the motion which carried by a vote of 4-0. Ms. Gibb was not present for the vote and Mr. Ribble and Mr. Hammack were absent from the meeting.

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Page 103, December 11, 2001, (Tape 1), After Agenda Item:

Request for Intent to Defer  
Thanh Van Tran, A 2001-SU-035

Mr. Pammel moved to approve an Intent to Defer to January 15, 2002, at 9:30 a.m. Mr. Hart seconded the motion which carried by a vote of 4-0. Ms. Gibb was not present for the vote and Mr. Ribble 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 10:32 a.m.

Minutes by: Regina Thorn Corbett

Approved on: March 26, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals





A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 18, 2001. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

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

Page 105, December 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CLARKE T. COOPER JR., VC 01-V-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.05 ft. from rear lot line. Located at 5900 Sandbrook Ct. on approx. 3,769 sq. ft. of land zoned R-12 and HC. Mt. Vernon District. Tax Map 83-4 ((5)) 74A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Clarke Cooper, 5900 Sandbrooke Court, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the re-construction of a florida room to a sunroom addition to be located 18.05 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 20 feet, therefore; a variance of 1.95 feet was requested.

Mr. Cooper presented the variance request as outlined in the statement of justification submitted with the application. He stated that the florida room was not practical for their lifestyle and a sunroom would better suit the family.

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

Mr. Hammack moved to approve VC 01-V-158 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CLARKE T. COOPER JR., VC 01-V-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.05 ft. from rear lot line. Located at 5900 Sandbrook Ct. on approx. 3,769 sq. ft. of land zoned R-12 and HC. Mt. Vernon District. Tax Map 83-4 ((5)) 74A. 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 18, 2001; 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 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 as shown on the plat prepared by Kenneth W. White dated, April 6, 2000, as revised by Clarke T. Cooper, Jr. and date stamped through August 9, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hart and Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 107, December 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. VICKI D. GALLIHER AND DOMINICA GUTIERREZ, SP 01-Y-057 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on keeping of animals. Located at 3634 Sweethorn Ct. on approx. 2,400 sq. ft. of land zoned R-5. Sully District. Tax Map 35-3 ((5)) 232.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vicki Galliher, 3534 Sweethorn Court, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a special permit for a modification to the limitations on the keeping of animals to allow the applicants to keep 3 dogs on a lot of less than the required 12,500 square feet.

Ms. Galliher presented the special permit request as outlined in the statement of justification submitted with the application. She submitted four letters of support along with the dogs' veterinary records. She stated that the property was maintained with regard to sanitary conditions.

Ms. Gibb asked how old the dogs were. Ms. Galliher answered that two were six years of age and one was seven years of age.

Mr. Hart asked if there had been any complaints from the neighbors. Mr. Bernal replied that the case originated from a complaint.

Mr. Pammel asked for clarification on the number of dogs. He said the staff report indicated that there were four dogs on the premises. Ms. Galliher explained that one of the dogs had passed away since the submission of the application and currently there were three dogs on the premises.

Chairman DiGiulian called for speakers.

Warren Stein, attorney for the applicants, came forward to speak. He stated that the dogs had resided in the same household for the past five years. He explained that he had sent a letter to the complainants and asked for ideas to alleviate the problem, however, there was no response. He said that the applicants had not been aware of any problems until the complaint was filed. He stated that the dogs were fairly small animals.

James and Barbara Lucas, 3632 Sweethorn Court, came forward to speak. Mr. Lucas stated that they had lived directly next door to the subject property since July of 1999. He explained that he worked rotating shifts and the noise from the dogs was excessive and the dogs prevented them from using their deck in the summer months. He said that the noise from the dogs directly affected their quality of life. He said that they had made several comments to the applicants about lowering the noise of the dogs while they were outside but no action was taken.

Ms. Gibb asked if there had been any noise reduction since the number of dogs had been lessened by one. Mr. Lucas replied that he had not noticed any reduction. He said that the complaint specifically referred to the outdoor noise. Ms. Gibb asked if he thought the situation could be remedied by strict conditions pertaining to the use of the backyard. Mr. Lucas replied that the owners would have to utilize strict discipline with the dogs while they were outdoors.

Jerry Nevel, Property Manager for Franklin Glenn, came forward to speak. He stated that the Board of Trustees was opposed to the dogs as the association documents mirrored the Fairfax County Zoning Ordinance. He stated that there were between 30 and 50 complaints per year regarding dogs in the townhouse area.

Ms. Galliher, in her rebuttal, reiterated that there was never any communication from Mr. and Mrs. Lucas that indicated any problem with the dogs. She submitted the letter, referenced by Mr. Stein, that was mailed to the Lucas family. She stated that all three dogs had undergone professional training and the property was properly maintained. She said that the dogs owned by the Lucas' also barked and were left in the backyard unattended. Ms. Galliher explained that the Lucas' were renovating their townhouse during the time that the noise complaint was filed. She suggested that her dogs were louder during that period due to the workmen

on the property.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that if the number of dogs were reduced to two then there would no longer be a violation and the conflict would only be between the two neighbors.

Mr. Pammel moved to deny SP 01-Y-057. Mr. Hammack seconded for the purposes of discussion. He stated that the Board had approved similar requests. He said that the presence of the dogs on the abutting property and the previous work activities on that property exacerbated the noise levels of the dogs.

The motion failed by a vote of 3-4. Chairman DiGiulian, Ms. Gibb, Mr. Hart and Mr. Kelley voted against the motion.

Mr. Hart suggested an amendment to the development conditions limiting the number of dogs outside to two at a time and mandating that the dogs needed to be supervised while outdoors.

Mr. Hart moved to approve SP 01-Y-057 with the Board's revised conditions and for the reasons stated in the Resolution. Ms. Gibb seconded the motion which carried by a vote of 4-3. Mr. Hammack, Mr. Pammel and Mr. Ribble voted against the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VICKI D. GALLIHER AND DOMINICA GUTIERREZ, SP 01-Y-057 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on keeping of animals. Located at 3634 Sweethorn Ct. on approx. 2,400 sq. ft. of land zoned R-5. Sully District. Tax Map 35-3 ((5)) 232. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2001; and

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

1. The applicants are the owners of the land.
2. The dogs are very small.
3. The noise problem could be a combination of the dogs on the subject property and the dogs on the adjacent property.
4. The Board's decision will not cancel out the violation with the neighborhood association.
5. The impacts of the third dog will not be significant compared to the other two.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 3634 Sweethorn Court (2,400 square

- feet), shown on the plat prepared by Guy H. Briggs, dated October 4, 1996, 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 dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
- 4. The yard used for the dogs shall be cleaned of animal debris daily and shall be disposed of in a method approved by the Health Department.
- 5. The dogs shall not be outside unless someone is at the home to supervise them and a maximum of two dogs shall be outside at a time.

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

Ms. Gibb seconded the motion which carried by a vote of 4-3. Mr. Hammack, Mr. Pammel, and Mr. Ribble voted against the motion. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the waiver vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 109, December 18, 2001, (Tape 1) Scheduled case of:

- 9:00 A.M. SANG T. AND BONG Y. KIM, SP 01-M-060 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit building to remain 3.4 ft. from rear lot line. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Concurrent with VC 01-M-168).
- 9:00 A.M. SANG T. AND BONG Y. KIM, VC 01-M-168 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 0.0 ft. from front lot line. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Concurrent with SP 01-M-060).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bob Lawrence, 3110 Fairview Drive, Falls Church, Virginia, replied that it was.

Mr. Pammel stated that the Board had received a large amount of information, which had been handed out that morning and he suggested a deferral to give them time to review the information before making a decision.

Mr. Hammack suggested that the Board hear the testimony and then defer the decision to allow them that time.

Mr. Hart made a disclosure that would not prevent his participation in the hearing.

Mavis Stanfield, Staff Coordinator, presented the requests as contained in the staff report. The applicants requested a reduction to the minimum yard requirements based on an error in building location to permit a building to remain 3.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 20 feet; therefore, a modification of 16.6 feet was requested. The applicants also requested a variance to

permit parking spaces to remain 0.0 feet from the front lot line. The Zoning Ordinance requires a minimum of 10 feet for the location of parking spaces in a front yard; therefore, a variance of 10 feet was requested.

Mr. Hammack asked staff to explain the impact that the mezzanine's construction without a permit would have on their decision. Ms. Stanfield explained that when the applicants attempted to obtain a building permit for renovations to the building it was discovered that they did not meet the Floor Area Ratio (FAR) requirements. She said that the applicants had agreed to remove a part of the mezzanine in order to meet the FAR requirements and they were working with the County to remedy that situation. She said there was a requirement in the development conditions that the FAR had to be met in order for the special permit to be valid.

Ms. Stanfield referred further questions to Diane Johnson-Quinn, Zoning Administration Division. There was conversation between Mr. Hammack and Ms. Johnson-Quinn with regard to the applicants' application for another address on the site and construction changes to accommodate a future tenant. Ms. Johnson-Quinn explained that in the summer of 2000, the applicants applied for building permits to do interior renovations which resulted in the splitting of the space into two side by side units and with a permit of that kind, it was customary to have an additional address. She stated that parking spaces were based on square footage and currently the use only occurred in half of the building, therefore, the parking requirement was reduced. She said that a parking tabulation would need to be performed if there was to be any use in the other half of the building and if there was not adequate parking the space would remain vacant. She indicated that the Board's decision would not affect those issues.

Mr. Lawrence presented the applications as outlined in the statements of justification submitted with the applications. He provided background information on the subject parcel and indicated that there were two variances that were approved for the property. He explained that the prior owner let the first variance; and site plan waiver expire and was granted a second variance however, the prior owner falsified records to indicate that there was an approved site plan in order obtain a building permit from the County and constructed the building. The error was discovered when the current owner applied for an amendment to the building permit to construct the mezzanine. He stated that the variance application and the special permit application would bring the building into compliance. He said that the special permit would allow the building to remain where it was currently. He referenced a site plan from 1972, which reflected the same parking layout. He stated that the parking would be located and additional 8 feet from the property line because the first space was designated for handicapped parking and needed to conform to those standards. He stated that the use did not necessitate any loading space. He said that the prospect of having two uses in the building was slim due to the limited parking.

Mr. Pammel asked what was the significance of the monitoring well. Dennis Kim, the applicants' son, explained that the monitoring well was required by the lender to ensure proper monitoring for any leakage of the dry cleaning materials. Mr. Pammel asked if there had been any leakage during the time that his family had owned the building. Mr. Kim replied that there had not.

Mr. Hart asked if the applicants owned the fence that extended along the adjacent portion of the property. Mr. Lawrence replied that fence belonged to the adjacent property owners.

Chairman DiGiulian called for speakers.

Tom Christensen, 3609 Prosperity Avenue, came forward to speak. He stated he was the President of the Pine Ridge Civic Association. He stated that they opposed both applications because the building was constructed with an invalid building permit and the building was not adequately parked. He stated that the applicant should construct the building according to the first variance approval.

Carol Cole, 3915 Pineland Street, came forward to speak. She indicated that the existing mezzanine was never approved for construction and it raised the height of the building to an unacceptable level.

Phillip Roach, 3919 Pineland Street, came forward to speak. He requested that the Board deny the applications and mandate that the applicant abide by the first variance approval.

Mr. Hart asked why the height of the building was 27 feet as opposed to 20 feet. Mr. Lawrence replied that

the additional height was from the mezzanine area and an existing restroom.

There was conversation between the Board, Mr. Lawrence and Ms. Johnson-Quinn as to how the erroneous building permit and the most recent Non-Rup were approved and why no inspections were done during construction of the building.

Mr. Hart stated that the fence on the adjacent property was rusted and was not appealing to the eye. He asked if the applicant would be willing to do something to obscure the view of the fence. Mr. Lawrence stated that it would be possible to plant trees to screen the area.

Mr. Hart suggested that conditions be added to restrict any outdoor storage and for the applicant to provide screening of the rusted fence to the rear of the property.

Mr. Hart moved to defer decision regarding SP 01-M-060 and VC 01-M-168 to January 15, 2001, at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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9:00 A.M. IRVING LEWIS HARRIS JR., SP 01-L-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 an accessory structure to remain 1.8 ft. from side lot line and 2.3 ft. from rear lot line. Located at 6708 Woodstone Pl. on approx. 6,864 sq. ft. of land zoned R-5. Lee District. Tax Map 92-2 ((30)) 378. (Concurrent with VC 01-L-157).

9:00 A.M. IRVING LEWIS HARRIS JR., VC 01-L-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. from rear lot line. Located at 6708 Woodstone Pl. on approx. 6,864 sq. ft. of land zoned R-5. Lee District. Tax Map 92-2 ((30)) 378. (Concurrent with SP 01-L-055).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Irving L. Harris, Jr., 6708 Woodstone Place, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the requests as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on an error in building location to permit a 9.7 foot high shed to remain 1.8 feet from the side lot line and 2.3 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet and a minimum rear yard of 9.7 feet; therefore, modifications of 6.2 feet and 7.4 feet were requested respectively. The applicant also requested a variance to permit the construction of an addition to be located 22.9 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 2.1 feet was requested.

Mr. Lewis presented the requests as outlined in the statement of justification submitted with the application. He stated that the variance was necessary due to the shallowness of the rear yard. He stated that the error in building location for the shed was discovered upon the variance request. He said that the shed existed upon his purchase of the home.

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

Mr. Ribble moved to approve SP 01-L-055 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

Page 112, December 18, 2001, (Tape 1), IRVING LEWIS HARRIS JR., SP 01-L-055 and IRVING LEWIS HARRIS JR., VC 01-L-157, continued from Page 111.

IRVING LEWIS HARRIS JR., SP 01-L-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 an accessory structure to remain 1.8 ft. from side lot line and 2.3 ft. from rear lot line. Located at 6708 Woodstone Pl. on approx. 6,864 sq. ft. of land zoned R-5. Lee District. Tax Map 92-2 ((30)) 378. (Concurrent with VC 01-L-157). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2001; and

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

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

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

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

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

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

1. This Special Permit is approved for the location of an accessory structure, as shown on the plat prepared by Richard Cronin, IV, dated August 8, 2001, submitted with this application and is not transferable to other land.

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

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were not present for the vote. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel seconded the motion



which carried by a vote of 6-0. Mr. Ribble was not present for the waiver vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2001. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble moved to approve VC 01-L-157 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

IRVING LEWIS HARRIS JR., VC 01-L-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. from rear lot line. Located at 6708 Woodstone Pl. on approx. 6,864 sq. ft. of land zoned R-5. Lee District. Tax Map 92-2 ((30)) 378. (Concurrent with SP 01-L-055). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2001; and

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

1. The applicant is the owner of the land.
2. The property is exceptionally shallow.
3. The lot is unusually 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.

Page 114, December 18, 2001, (Tape 1), IRVING LEWIS HARRIS JR., SP 01-L-055 and IRVING LEWIS HARRIS JR., VC 01-L-157, continued from Page 113

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 an addition, as shown on the plat prepared by Richard Cronin, IV, dated August 8, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were not present for the vote. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the waiver vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 114, December 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. VARDREY JERRELL TAYLOR, TRUSTEE, VC 01-L-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. from front lot line. Located at 6821 Lenclair St. on approx. 11,226 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 13A and 14A.

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

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested approval to permit construction of a two-story addition to be located 25.0 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 35 feet; therefore, a variance of 10.0 feet was requested.

Mr. Taylor presented the variance request as outlined in the statement of justification submitted with the application. He stated that because his lot was narrow and the side was the only location possible to construct the addition. He said the home only had one bedroom and he needed the addition to provide additional living space for his family.

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

Ms. Gibb moved to approve VC 01-L-173 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VARDREY JERRELL TAYLOR, TRUSTEE, VC 01-L-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. from front lot line. Located at 6821 Lenclair St. on approx. 11,226 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (5) 13A and 14A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant's testimony and statement of justification indicated compliance with the required standards for the granting of a variance.
3. The lot is shallow.
4. The existing home does not comply with the current Zoning Ordinance with respect to the front yard setback.
5. The addition is going to be in the same location as the existing home.
6. The variance request is reasonable.
7. The variance requested is the only possible location on the property to construct the addition.

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

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

Page 116, December 18, 2001, (Tape 1), VARDREY JERRELL TAYLOR, TRUSTEE, VC 01-L-173, continued from Page 115

not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 shown on the plat prepared by Alexandria Surveys International, LLC, dated August 8, 2001, as revised through October 2, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the waiver vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 116, December 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. SEAN LEE, VC 01-L-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.4 ft. from rear lot line. Located at 6117 Holly Tree Dr. on approx. 8,645 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((25)) 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. Sean Lee, 6117 Holly Tree Drive, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested approval to permit the construction of a sunroom to be located 20.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet, therefore, a variance of 4.6 feet was requested.

Mr. Hart asked who owned Outlot B. Mr. Lee explained that Outlot B was owned by the occupants of 6121 Holly Tree Drive.

Mr. Hart asked staff if Outlot B was considered a buildable lot. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it was unclear whether or not the lot was buildable because there was no specific information as to whether the parcel had adequate street frontage.

Mr. Lee presented the variance request as outlined in the statement of justification submitted with the application. He stated that Outlot B was purchased to keep it from being built on and he submitted a letter of support from that owner.

Robert Heir, American All Season Sunrooms, stated that he was the contractor for the sunroom. He stated that the property was exceptionally shallow to the rear and the variance was needed to construct the sunroom. He said the sunroom would be architecturally compatible with the existing dwelling.

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

Mr. Hammack moved to approve VC 01-L-162 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

SEAN LEE, VC 01-L-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.4 ft. from rear lot line. Located at 6117 Holly Tree Dr. on approx. 8,645 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((25)) 7. 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 18, 2001; 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 the granting of a variance.
3. The property has topographical conditions.
4. The sunroom will be in the location of an existing deck.
5. The property backs up to an outlot which appears to have a significant drainage easement that extends across the back, so the addition will change the character of the zoning district.

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

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

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

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

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

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

1. This variance is approved for the location of the sunroom addition shown on the plat prepared by Alexandria Surveys International, LLC, dated August 10, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the waiver vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 118, December 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SPA 77-A-041-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-A-041 previously approved for a church and nursery school to permit building additions, site modifications, increase in land area and change in permittee. Located at 5222 Sideburn Rd. on approx. 16.22 ac. of land zoned R-1. Braddock District. Tax Map 68-4 ((1)) 1 and 2. (Admin moved from 12/11/01 at appl req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, 2200 Clarendon Boulevard, 13<sup>th</sup> Floor, Arlington, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested to an amendment to SP 77-A-041 previously approved for a church and

Page 119, December 18, 2001, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SPA 77-A-041-3, continued from Page 118

nursery school to permit building additions, site modifications, an increase in land area, and a change in permittee. The application proposed the construction of a 1,200 square foot administrative addition and a 14,200 square foot multipurpose addition to the existing 34,149 square foot sanctuary. The application also proposed the construction of a new sanctuary consisting of 40,950 square feet and a 6,300 square foot rectory. The construction of 269 additional parking spaces was proposed for a total of 512 spaces on the site. The applicant proposed an increase in land area of 9.89 acres with the addition of Lot 1. The applicant also proposed a change in permittee from St. Mary of Sorrows, Most Rev. John R. Keating to The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia and his Successors in Office. There were no changes in the number of children in the nursery school, hours of operation, or number of employees. The site had been the subject of special permits granted by the BZA since 1977, and the applicant currently requested essentially the same conditions as previously approved. Staff recommended approval of SPA 77-A-041-3.

Lynne Strobel, agent for the applicants, presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the Church needed to evolve to meet the needs of the existing congregation members and would not result in an expansion of the membership. She explained that the proposal of additional parking spaces would alleviate a current parking problem. She said that trees would be preserved around the perimeter of the property and supplemented with new plantings. She stated that the applicants had requested a change to Development Condition #16 that contained wording which required that the outdoor lights be turned off 1 hour after the last scheduled service. She explained that the existing lights were on light sensors that turned on at dusk and went off at dawn and it would be expensive to change the existing light fixtures to conform with the development condition requirements. She said that the church was concerned about security issues if the lights were turned off during the night. She informed the Board that the lights on the property were centrally located and were currently screened and shielded; therefore, the neighbors would not be affected. She requested to delete the wording that required the lights to be turned off 1 hour after the last scheduled service. Ms. Strobel asked for all of the supporters of the application that were in the audience to stand.

Mr. Pammel asked if the applicant was agreeable to restricting only the proposed lighting to be turned off 1 hour after the last scheduled service as opposed to the existing lighting. Ms. Strobel stated that the applicant had safety concerns because the new parking area would be completely dark at night. She reiterated that the new lighting would be shielded and downward directed.

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

Mr. Hammack stated that he had reservations regarding the amount of lighting in the parking lot because the proposal would more than double the size of the existing parking lot. He stated that although the fixtures were screened and downward directed, it was a large area to have the lights on all night and it presented a commercial appearance in the residential neighborhood.

Ms. Gibb stated that the wording of development condition #16 provided for adequate security lighting.

Mr. Pammel moved to approve SPA 77-A-041-3 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SPA 77-A-041-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-A-041 previously approved for a church and nursery school to permit building additions, site modifications, increase in land area and change in permittee. Located at 5222 Sideburn Rd. on approx. 16.22 ac. of land zoned R-1. Braddock District. Tax Map 68-4 ((1)) 1 and 2. (Admin moved from 12/11/01 at appl req.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

Page 120, December 18, 2001, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SPA 77-A-041-3, continued from Page 119

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for 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 only and is not transferable without further action of this Board, and is for the location indicated on the application, 5222 Sideburn Road (16.22 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., dated May 21, 2001, as revised through November 21, 2001, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity in the main area of worship shall be limited to 1,400 seats upon issuance of a Non-Residential Use Permit for this special permit amendment.
6. The nursery school shall be limited to a maximum daily enrollment of 99 children.
7. The hours of operation for the nursery school shall be limited to 9:00 a.m. to 3:30 p.m., Monday through Friday.
8. There shall be a maximum twenty-five (25) full-time employees for the church use. There shall be a maximum of twelve (12) full-time employees for the nursery school use.
9. There shall be a maximum of 512 parking spaces provided as shown on the special permit plat. The size of the parking spaces shall be in accordance with Sect. 7-802 of the Public Facilities Manual. All parking shall be on site as shown on the special permit plat.
10. The exterior of the additions and sanctuary and architectural massing shall be architecturally compatible with the existing church and shall be similar in color, style and materials as determined



by the Department of Public Works and Environmental Services (DPWES). The colors shall be subdued and predominantly earth tones.

11. Stormwater Management and Best Management Practices (BMPs) shall be provided on-site as shown on the special permit plat. The final design shall be subject to the approval of DPWES.

If the existing Stormwater detention system does not meet County detention requirements or the best management practices (BMP) requirements of the Chesapeake Bay Preservation Act on Lot 2, to address these problems, the applicant shall comply with all County storm drainage and BMP requirements to the satisfaction of the Director, DPWES. A Non-Residential Use Permit for the proposed additions to the subject property shall not be issued until this problem has been addressed and resolved. If the required design is not in substantial conformance with that shown on the special permit plat, the applicant shall be required to apply for a special permit amendment for approval of the resulting change.

12. The barrier requirement shall be modified along all lot lines of the subject property, in favor of the existing decorative fencing on Lot 1. Decorative fencing, which may replace or incorporate the existing fence, shall be installed along portions of the perimeter of the property adjacent to Zion Drive and the adjacent residential community, within the applicant's discretion. The fence shall be field located by the applicant in conjunction with the Urban Forestry Division to ensure preservation of existing vegetation.
13. The requirements for Transitional Screening 1 shall be modified along all lot lines on Lot 1 in favor of the existing vegetation and supplemental plantings, as shown on the special permit amendment plat, and as determined by the Urban Forestry Division.

The existing vegetation on Lot 2 shall be deemed to fulfill the requirements for Transitional Screening 1 along all lot lines. Existing vegetation on site shall be preserved and maintained as indicated on the approved special permit amendment plat. Any landscaping or existing vegetation on site as approved by the Urban Forestry Division in conjunction with site plan approvals under SP 77-A-041, SPA 77-A-041 and SPA 77-A-041-2 shall be inspected by the Urban Forester and replacement plantings shall be required for any vegetation which is dead, dying or hazardous.

14. Interior and peripheral parking lot landscaping and tree cover requirements shall be provided in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of any plantings shall be as determined by the Urban Forestry Division, DPWES at the time of site plan review.
15. Adequate sight distance shall be provided both to the north and south of the site entrance on Sideburn Road.
16. Outdoor lighting fixtures used to illuminate the parking areas and walkways shall not exceed twelve (12) feet in height. All fixtures shall be fully shielded, full cut-off and directed downward, to prevent glare and light spillover onto the surrounding residential properties. Outdoor building-mounted security lighting shall also be shielded and directed inward to prevent glare. All parking lot lighting, with the exception of necessary security lighting, shall be turned off within one hour of the last scheduled evening activity.
17. Signs shall be permitted in accordance with Article 12, Signs.
18. The limits of clearing and grading shall be no greater than shown on the special permit plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for construction, a pre-construction conference shall be held between DPWES, including the Urban Forester and representatives of the applicant to include the construction site superintendent

responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.

19. The location of heating and air conditioning and associated mechanical units (HVAC systems) shall be placed no closer than one hundred (100) feet from any property lines, to minimize the noise impact on the surrounding residential properties. The design of the HVAC system shall be such that as many of the components as possible shall be located inside the building. The units shall be subject to Zoning Ordinance performance standards with respect to noise levels, and shall be further surrounded by vegetative screening and fencing so as to minimize the exterior noise to the maximum extent possible.
20. Trash dumpsters shall be screened with wood or masonry enclosures which are designed to be compatible with the buildings, shall be screened from the adjacent residential properties with vegetation, and shall be located in the general area shown on the special permit plat. Refuse and trash removal shall be permitted only between the hours of 8:00 a.m. and 6:00 p.m., weekdays.
21. The applicant shall retain a certified arborist to prepare a tree preservation plan to be reviewed by the Urban Forestry Division as part of the first site plan submission. The tree preservation plan shall consist of a tree survey which includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12) inches or greater in diameter ten (10) feet to either side of the proposed limits of clearing and grading as shown on the special permit plat and all trees, four (4) inches in diameter or greater, located in the tree preservation areas on the western portion of the site. The condition analysis shall be prepared using methods outlined in the latest edition of "The Guide for Plant Appraisal." Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be provided. Activities may include, but are not limited to, crown pruning, root pruning, mulching and fertilization.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing consisting of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart shall be erected at the limits of clearing and grading as shown on the phase I and II erosion and sediment control sheets.

All tree preservation activities, including installation of tree protection fencing, shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading or demolition activities on the site, the certified arborist shall verify in writing to the Urban Forestry Division that the tree protection fencing has been properly installed.

22. All transportation and stormwater management improvements, as shown on the special permit amendment plat and as determined necessary by the Director, DPWES, shall be completed prior to the issuance of a Non-Residential Use Permit.
23. The existing driveway on Lot 1 shall be removed and shall not be used for access to the site. The pavement shall be removed for the entirety of the driveway and scarification shall occur from the turnaround north only, as determined by the Urban Forester, to ensure minimal disruption to the root system of the oak tree located along Zion Drive.
24. The acceleration lane along Zion Drive shall be constructed as shown on the special permit plat in order to preserve and protect the root system of the specimen oak located to the south of the rectory. The acceleration lane design shall be in substantial conformance with the special permit plat with any changes to the final design and alignment approved by VDOT, DPWES and the Urban Forester. However, in no case shall the edge of pavement and limits of clearing and grading for the acceleration lane be closer to the specimen oak than shown on the special permit plat.

Page 123, December 18, 2001, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SPA 77-A-041-3, continued from Page 122

25. The number of windows on the side of the proposed fellowship hall adjacent to residential dwellings located on Concordia Drive shall be limited to minimize visual intrusion on the neighborhood.
26. Recreation facilities shall not be used by groups that are not affiliated with the Catholic Diocese. Recreation facilities shall not be leased or rented.
27. Grasscrete pavers shall be utilized in the construction of that portion of the stormwater management pond maintenance access road closest to the adjacent residential community, as shown on the special permit amendment plat.
28. Proposed improvements shall be phased with the order of phasing to be determined by the Applicant within its sole discretion. Anticipated phases of construction are as follows: site work and new parking; sanctuary; fellowship hall; renovation of existing building; administration building; rectory. The actual amount of funds raised, approval by the Bishop of the Arlington Diocese, and approval by Fairfax County shall determine actual sequence and timing of the proposed phases.

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. 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 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 not present for the vote. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the waiver vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 123, December 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF THE KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83- P-057- 4 Appl. under Sect(s). 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a church to permit building additions, increase in seating, site modifications and change in development conditions. Located at 8526 Amanda Pl. on approx. 12.38 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Moved from 12/19/00, 1/30/01, 3/6/01, 10/2/01, and 11/6/01)

This case was administratively moved to January 22, 2002, per the applicant's request.

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Page 124, December 18, 2001, (Tape 1) Scheduled case of:

9:30 A.M. LILIANE P. AND GEORGE J. KNAKMUHS, A 1999-SP-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a business (Clifton Pottery) without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. Located at 7601 Clifton Rd. on approx. 91,476 sq. ft. of land zoned R-C, C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 12. (Def. From 8/1/00, 1/2/01, and 6/26/01 for decision only)

Ms. Gibb moved to defer decision regarding A 1999-SP-020 until April 23, 2002, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Kelley were not present for the vote.

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Page 124, December 18, 2001, (Tape 1) Scheduled case of:

9:30 A.M. MARK J. AND LAVONNE C. ROLINCIK, A 2001-SP-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are occupying the subject property without having obtained a Residential Use Permit in violation of Sect. 18-701 of the Zoning Ordinance. Located at 12509 Easter La. on approx. 1.07 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((5)) 40. (Admin moved from 10/9/01) (Def. From 9/11/01 and 9/18/01) (continued from 9/25/01)

Mr. Hammack moved to continue A 2001-SP-016 until February 12, 2002, at 9:30 a.m. 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 124, December 18, 2001, (Tape 1) After Agenda Item:

Approval of July 10, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 124, December 18, 2001, (Tape 1) After Agenda Item:

Out of Turn Hearing Request  
Kristian and Sandra Motz, A 2001-PR-050

Mr. Pammel moved to approve the Out of Turn Hearing Request regarding A 2001-PR-050. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. The hearing was scheduled for February 12, 2002, at 9:30 a.m.

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Page 124, December 18, 2001, (Tape 1) After Agenda Item:

Approval of December 11, 2001 Resolutions

Mr. Pammel moved to approve the 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 125, December 18, 2001, (Tape 1), continued from Page 124

As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Lori M. Mallam

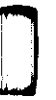
Approved on: May 7, 2002

Regina Thom Corbett

Regina Thom Corbett, Clerk  
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman  
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 8, 2002. The following Board Members were present: Chairman John DiGiulian, Nancy Gibb, Paul Hammack, James Hart, James Pammel, and John Ribble. Mr. Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m.

Mr. Pammel nominated John DiGiulian to be the Chairman of the Board of Zoning Appeals for the year 2002, and Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Mr. Hart nominated John Ribble and Paul Hammack to be Vice Chairmen of the Board of Zoning Appeals for the year 2002. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no other Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 127, January 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DIANA L. & R. BRUCE HOLCOMB, SP 01-D-061 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 4.4 ft. from side lot line. Located at 7909 Old Falls Rd. on approx. 21,784 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 6. (Concurrent with VC 01-D-154).

9:00 A.M. R. BRUCE AND DIANA L. HOLCOMB, VC 01-D-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from side lot line. Located at 7909 Old Falls Rd. on approx. 21,784 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 6. (Concurrent with SP 01-D-061). (Admin moved from 12/11)

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 Kamastra, Agent, 1608 Washington Place, Reston, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the variance request as contained in the staff report. She stated that the applicant sought a special permit to permit the reduction of the minimum yard requirements due to error in building location to allow an accessory structure and archway to remain 4.4 feet from the side lot line.

Ms. Langdon stated that the applicant also sought a variance to permit construction of an addition 14.8 feet from the side lot line. She said the Ordinance permits a side yard of 20 feet; therefore, a variance of 14.8 feet was requested.

Mr. Kamastra presented the variance and special permit requests as outlined in the statement of justification submitted with the application. He stated that the original owners of the property had hired an architect and landscape contractor to build a gateway and landscape the entryway into the subject property. He said the architect found that the property had a drainage problem in the desired area, and the gateway and archway had been constructed over the storm easement area.

Mr. Pammel asked if the applicant had been aware that the County had the right to go under the archway if they needed to, without cost to the County. Mr. Kamastra replied the applicants were aware of that.

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

Mr. Pammel made the motion to approve SP 01-D-061 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

DIANA L. & R. BRUCE HOLCOMB, SP 01-D-061 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 4.4 ft. from side lot line. Located at 7909 Old Falls Rd. on approx. 21,784 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 6. (Concurrent with VC 01-D-154). 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 8, 2002; 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 archway shown on the plat prepared by LS2PC Land Surveying Services, dated June 18, 2001, as revised through November 21, 2001, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance



with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote and Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 16, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approved VC 01-D-154 for the reasons noted in the Resolutions.

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### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

R. BRUCE AND DIANA L. HOLCOMB, VC 01-D-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from side lot line. Located at 7909 Old Falls Rd. on approx. 21,784 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 6. (Concurrent with SP 01-D-061). (Admin moved from 12/11). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance as indicated in the staff report and the applicant's testimony.
3. The variance request was very minimal.

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

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

all reasonable use of the subject property, or

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by LS2PC Land Surveying Services, dated June 18, 2001, as revised through November 21, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote, and Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 16, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 130, January 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DEAN & HEIDI CLANCY, VC 01-B-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.24 ft. from rear lot line. Located at 8807 Willow Ridge La. on approx. 10,512 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 291.

Chairman DiGiulian stated that Dean and Heidi Clancy, VC 01-B-165, had been administratively moved to February 19, 2002.

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Page 130, January 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DENNIS & KATE LEBER, VC 01-V-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.23 ft. from rear lot line. Located at 8481 Catia La. on approx. 9,205 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((16)) 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. Terry Farrell, Clear Vision Sunrooms, Agent, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant sought a variance to permit construction of an addition to the dwelling to be 16.23 feet from the rear lot line. She said the Ordinance required a minimum rear yard of 25 feet; therefore, a variance of 8.77 feet was requested.

Mr. Farrell came forward to present the variance request. Chairman DiGiulian stated that Mr. Farrell was not listed on the affidavit and therefore, could not represent the applicant. Mr. Leber was present, and came forward to make the variance request. He stated that he was Dennis Leber, 8481 Catia Lane, Springfield, Virginia, and reaffirmed the affidavit.

Chairman DiGiulian stated that Mr. Farrell could then come forward to speak on behalf of the Lebers.

Mr. Farrell presented the variance request as outlined in the statement of justification submitted with the application. He stated that the subject property had an odd shape that made it difficult to place any additions. He said that the back of the house had double-wide doors which lead to the outside, and it had been decided that was the best place for the sunroom.

Mr. Hart asked if there was any other place that the sunroom could be placed. Mr. Farrell replied that they had looked at all angles and could not find any other place for it. He said that there was a park behind the Lebers' rear lot line that would never be developed, so he believed that was the best place.

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

Mr. Hammack made a motion to approve VC 01-D-179 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DENNIS & KATE LEBER, VC 01-V-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.23 ft. from rear lot line. Located at 8481 Catia La. on approx. 9,205 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((16)) 14. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot has a very irregular triangular shape, almost without a rear yard.
4. The proposed addition would be on the side of the house that backs up to common ground.
5. The proposed addition will not impact any property owner.

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

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

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

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

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

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

1. This variance is approved for the location of a sunroom addition, shown on the plat prepared by Ned A. Marshall, dated October 15, 2001, as revised through October 22, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The sunroom addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time 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 January 16, 2001. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel stated that recently there had been several applications where the houses overwhelmed the lot area, similar to the previous case. He said he would like to make a motion for Susan Langdon, Chief, Special Permits and Variance Branch, to pass onto the Planning Commission a request for an amendment to the Zoning Ordinance to establish floor area ratios for all residential uses, specifically single family residential

areas.

Mr. Hammack seconded the motion for discussion. He said he believed that there were more problems with lot configurations than with large structures on small lots.

The Board had a brief discussion on this issue and how it had impacted variances and special permits.

Mr. Hart made an amendment to Mr. Pammel's motion to ask the Planning Commission to consider the variance and special permit implications of large houses on small lots in the course of their residential development study.

Mr. Pammel accepted the amendment which carried with a 6-0 vote. Mr. Kelley was absent from the meeting.

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Page 133, January 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BLAIR BOWEN & KEVIN B. BEDELL, VC 01-D-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.4 ft. from side lot line such that side yards total 16.4 ft. Located at 1309 Capulet Ct. on approx. 15,181 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 74.

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 Bedell, 1309 Capulet Court, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of a two-car garage addition with a room above it, to be located 6.4 feet from the side lot line, and that the side yards would total 16.4 feet. He said that the minimum side yard requirement was 8 feet, with a total minimum of 24 feet; therefore, a variance of 1.6 feet was requested for the garage addition, and a variance of 7.6 feet for the total side yards was requested.

Mr. Bedell presented the variance request as outlined in the statement of justification submitted with the application. He stated that the subject property was a pie-shaped lot, and the house was constructed on the front portion of the lot, which did not leave enough room for a two-car garage without a variance. He said there were many houses in the neighborhood that had been granted greater variances to add similar garages. He stated that he had gotten the Architectural Control Committee's approval for his plans, and there would still be approximately 26 feet between the houses.

Mr. Hammack asked if there was to be a room above the garage and Mr. Bedell replied that was his intention. He said the second story would be integrated with the architecture of the existing house in order to preserve the look of the house and he explained the different dimensions of the house. He said the neighbors had no objections.

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

Mr. Hart moved to approve VC 01-D-170 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BLAIR BOWEN & KEVIN B. BEDELL, VC 01-D-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.4 ft. from side lot line such that side yards total 16.4 ft. Located at 1309 Capulet Ct. on approx. 15,181 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 74. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot has an exceptional wedge shape and is only approximately 75 feet wide at the street.
4. The house is located very far forward on the property.
5. The magnitude of the variance is consistent with others in the neighborhood.
6. The lot is impacted by sewer easements.
7. The applicant has the support of the Architectural Committee for the McLean Hamlet subdivision.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by David J. Kacar, stamp dated, October 22, 2001, as submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 16, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 135 January 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. HECTOR BELTRAN, VC 01-L-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.5 ft. from side lot line. Located at 6225 Dana Ave. on approx. 8,616 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3)) (80) 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. Hector Beltran, 6225 Dana Avenue, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit the enclosure of a carport for the construction of a bedroom addition to be located 11.5 feet from the side lot line. He said the minimum side yard requirement was 12 feet; therefore, a variance of 0.5 feet was requested.

Mr. Beltran presented the variance request as outlined in the statement of justification submitted with the application. Mr. Ribble said that in Mr. Beltran's written statement of justification, he had indicated his lot was too narrow to accommodate the minimal enlargement of a room. Mr. Beltran replied that was correct.

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

Mr. Ribble moved to approve VC 01-L-171 for reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HECTOR BELTRAN, VC 01-L-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.5 ft. from side lot line. Located at 6225 Dana Ave. on approx. 8,616 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3)) (80) 13. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 8, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is exceptionally narrow.
4. The variance requested is very minimal.

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

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

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

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

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

1. This variance is approved for the location of a bedroom addition (carport enclosure) as shown on the plat prepared by Robert R. Kim, dated, July 8, 1959, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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



requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 16, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CAROL A. LUTTNER FRIX, VC 01-P-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.3 ft from rear lot line. Located at 8477 Nicole Ct. on approx. 11,324 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 59-1 ((27)) 38.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carol Luttner Frix, 8477 Nicole Court, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He said the applicant sought a variance to permit the construction of a sunroom addition to be located 19.3 feet from the rear lot line. The minimum rear yard requirement was 25 feet; therefore, a variance of 5.7 feet was requested.

Ms. Frix presented the variance request as outlined in the statement of justification submitted with the application. She stated that due to the irregular shape of the lot, a variance was needed to accommodate the right rear corner of the sunroom which abutted common space owned by the Homeowners Association. She said she did not believe that the sunroom would impact her neighbors.

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

Ms. Gibb moved to approve VC 01-P-163 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CAROL A. LUTTNER FRIX, VC 01-P-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.3 ft from rear lot line. Located at 8477 Nicole Ct. on approx. 11,324 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 59-1 ((27)) 38. 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 January 8, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot has an exceptional shape.
4. The house is located in an unusual way on the property.
5. The variance is needed for only one corner of the house,
6. The variance is a modest encroachment.

7. The sunroom will back up onto Home Owners Association property.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Larry N. Scartz dated, August 18, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. 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

16, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 139, January 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP & LAURA ESKELAND, VC 01-P-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.1 ft. from side lot line. Located at 2426 Jackson Pkwy. on approx. 10,979 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 110.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philip Eskeland, 2426 Jackson Parkway, Vienna, Virginia, replied that it was.

William Mayland, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. He stated that the applicant sought approval of a variance to construct an addition to the dwelling of a two-car garage to be located 2.1 feet from the side lot line. He said that the minimum side yard requirement was 12 feet; therefore, a variance of 9.9 feet was requested.

Mr. Hart asked staff if the request was 2.1 feet from the wall of the garage or the roof. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the plat showed 2.1 feet to the wall, and Mr. Eskeland would not be able to have an eave on that side of the house because it would be closer than 2 feet to the lot line.

Mr. Eskeland presented the variance request as outlined in the statement of justification submitted with the application. He stated that he wanted to add the two-car garage to provide further security and shelter for his family. He said they liked their neighborhood and did not want to move further out to get a larger house, but preferred adding to the existing home.

Mr. Eskeland stated that his closest neighbor had supported his application and a letter had been submitted to the Board for the record. He said the two-car garage was within the character and the scale of the existing house and other similar homes in the neighborhood. He stated that there were two colonial homes in the neighborhood that also had two-car garage additions on the side of the house which were within 3 feet or less of their neighbor's property line.

Mr. Hammack stated that the proposed addition was 4 feet to 8 feet longer than a regular two-car garage and asked what Mr. Eskeland intended to do with that space. Mr. Eskeland replied that he needed the space for family storage and his workbench.

Mr. Hammack stated that he had problems granting anything 2.1 feet from the side lot line and could not support the application in the current configuration. He said that the space did not allow any distance between the lot line and the structure. He stated that he felt that 28 feet presented a lot more length than was required and was not minimal. Mr. Hammack asked Mr. Eskeland if he could accept a smaller structure and Mr. Eskeland replied by giving comparisons of other houses within the neighborhood.

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

Mr. Hammack asked staff if Mr. Eskeland could build a one-car garage as a matter of right. Susan Langdon, Chief, Special Permits and Variance Branch, replied that he could as long as it was not closer than 12 feet to the side lot line.

Mr. Hammack made a motion to deny VC 01-P-080 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

PHILIP & LAURA ESKELAND, VC 01-P-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.1 ft. from side lot line. Located at 2426 Jackson Pkwy. on approx. 10,979 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 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 January 8, 2002 date; and

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

1. The applicants are the owners of the land.
2. The applicant failed to present testimony indicating compliance with the required standards for a variance.
3. The bulk of the structure would impact the adjacent neighbor.
4. There would be problems in the maintenance of the structure.
5. There would be a possibility of trespassing on the adjacent property by building so close to the lot line.

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

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

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

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

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack made a motion to waive the

12 month waiting period for refiling. Mr. Ribble seconded the motion, which carried with 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 16, 2002.

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Page 141, January 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. HARCO I, INC., SPA 92-L-047 Appl. under Sect(s). 8-501 of the Zoning Ordinance to amend SP 92-L-047 previously approved for a billiard and pool hall to permit change in permittee. Located at 7255 Commerce St. on approx. 7.39 ac. of land zoned C-6, HC, SC and CRD. Lee District. Tax Map 80-3 ((1)) 4B and 11B.

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

Denise Thomas, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. She stated that the applicant sought a special permit amendment to change the permittee on the special permit that governs Fast Eddie's Billiard Café from Fast Eddie's Inc. to Harco I, Inc.

Mr. Thomas presented the variance request as outlined in the statement of justification submitted with the application. He said there was nothing to add since the request was a simple change. Mr. Thomas requested a waiver of the eight day waiting period.

Mr. Hart clarified that the permittee was the only change that was to be made and Mr. Thomas replied that it was.

Mr. Hammack asked if the applicant was familiar with the development conditions and if they agreed to comply with them. Mr. Thomas replied that the applicant, Mr. Harris, had read the development conditions and had agreed to comply with them.

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

Mr. Pammel moved to approved SPA 92-L-047 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

HARCO I, INC., SPA 92-L-047 Appl. under Sect(s). 8-501 of the Zoning Ordinance to amend SP 92-L-047 previously approved for a billiard and pool hall to permit change in permittee. Located at 7255 Commerce St. on approx. 7.39 ac. of land zoned C-6, HC, SC and CRD. Lee District. Tax Map 80-3 ((1)) 4B and 11B. 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 date January 8, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a special permit.

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). 8-501 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, 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 amendment plat prepared by Springfield Engineering Corp., revised through May 22, 1991, and approved with this application, as qualified by these development conditions. This approval shall only govern the 6,020 square foot area to be occupied by the approved billiard parlor at 7255 Commerce Street.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved plat and 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. A minimum of 28 parking spaces shall be allocated for this use. At the time of site plan review a parking tabulation shall be submitted to and approved by DPWES (Department of Public Works and Environmental Services) which shows that the required parking for all uses can be provided in the shopping center or this special permit shall be null and void.
6. Landscaping in the existing parking lot islands and in the area along Commerce Street in the vicinity of the approved billiard parlor shall be maintained in accordance with the approved site plan for the Springfield Plaza shopping center. If any of the existing vegetation in the parking area in the vicinity of the billiard parlor dies or is removed, it shall be replaced with plantings of a similar size and species as determined by the Urban Forestry Branch, DPWES.
7. Any signage erected on the building shall be of a size and material which is compatible with existing signage in the shopping center and shall be subject to the issuance of appropriate sign permits under Article 12 of the Zoning Ordinance.
8. Harco I, Inc. will allow no one under the age of eighteen (18) on the premises unless accompanied by a parent or guardian at all times or unless the person under eighteen is participating in a recognized activity sponsored by the Billiard Café such as billiard instruction or league play. All instruction and league play shall be strictly supervised by café management and strict adherence to all conditions of the Special Use Permit and the laws and ordinances of Fairfax County and the State of Virginia shall be observed, including the laws of the Alcohol Beverage Control Board.
9. Proper attire shall be required and appropriate signage shall be posted at the entrance to the premises and this dress code shall also be strictly enforced. A neat, clean appearance shall be necessary for admittance. Specific prohibitions shall include, but not be limited to, cut-off pants or jeans, tank tops or other sleeveless shirts, work clothing other than basic business attire, and clothing signifying membership in a gang or such activity.
10. The hours of operation shall not exceed 11:00 a.m. to 2:00 a.m. daily.

These development conditions incorporate and supersede all previous development conditions.

Page 143 January 8, 2002, (Tape 1), HARCO I, INC., SPA 92-L-047, continued from Page 142

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless a new Non-Residential Use Permit (Non-RUP) has been issued. The Board of Zoning Appeals may grant additional time to obtain a new Non-RUP 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

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 8-day waiting period. 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 January 8, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 143, January 8, 2002, (Tape 1), Scheduled case of:

9:30 A.M. IL CIGNO RISTORANTE, A 2001-HM-021 Appl. under Sect(s): 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed on the property a tent which displays advertising signs, without Building Permit or Sign Permit approval and without obtaining Architectural Review Board approval of such permits, as required in the Historic Overlay District, all in violation of Zoning Ordinance provisions. Located at 1617 Washington Pl. on approx. 4,075 sq. ft. of land zoned PRC and HD. Hunter Mill District. Tax Map 17-2 ((31)) 1617 and B. (Admin moved from 10/23/01)

Chairman DiGiulian stated that appeal application A 2001-HM-021, Il Cigno Ristorante had been administratively moved to May 7, 2002.

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Page 143, January 8, 2002, (Tape 1 and 2), Scheduled case of:

9:30 A.M. WILFREDO O. CIFUENTES, A 2001-LE-025 Appl. under Sect(s): 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is being used as a junk yard and that such activity has been established in violation of various Zoning Ordinance provisions. Located at 7716 / 7800 Cinder Bed Rd. on approx. 10.09 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 15, 15A and 16. (Def. from 11/6/01 for notices).

Chairman DiGiulian recused himself from the hearing as his office had done survey work for the adjacent property.

William Shoup, Deputy Zoning Administrator, stated that Mr. Cifuentes and Ms. Gladis Diaz, the appellants in the following two cases, had both retained the attorney, Mr. Richard During, in the past week and believed a deferral would be requested.

Richard During, Agent, stated that he had recently been retained by Mr. Cifuentes and Ms. Diaz to represent them. He stated that Daryl Varney, Senior Assistant to the Zoning Administrator, had initially called him to confirm that Ms. Diaz had retained his services. He said that Mr. Varney told him, because of the short notice before the hearing, it would probably be necessary for a continuance. Mr. During stated that a few days later he called and spoke with Mr. Shoup and was told that the Zoning office would not agree to a continuance. Mr. During stated that if Mr. Varney had told him that the County opposed further continuances in this matter, he would have advised Ms. Diaz and Mr. Cifuentes to seek other counsel.

Mr. During requested that Ms. Diaz and Mr. Cifuentes be given one more continuance to allow him time to work with them. He explained the difficulties with the language barrier and Mr. Cifuentes' emergency trip back to Guatemala.

Ms. Gibb clarified that Mr. During represented both Mr. Cifuentes and Ms. Diaz. Mr. During replied that was correct.

Ms. Gibb asked Mr. Shoup if the legal notices had been sent out by both Ms. Diaz and Mr. Cifuentes. Mr. Shoup replied that the staff had sent out the notices for Mr. Cifuentes as had been agreed upon at the last hearing. He said that Ms. Diaz had not sent out any legal notices.

Mr. During stated that because of the language barrier, it was possible that Ms. Diaz had not understood what was required of her and that she had put forth the good faith effort to retain counsel.

Mr. Hart noted that the cost of advertising cases was very high, and at the last hearing the Board agreed to a continuance, but was adamant that the notices had to go out. He asked Mr. Shoup what would the cost be if the Board should allow another continuance. Mr. Shoup replied that the newspaper ads ran about \$400 for each case.

Mr. Shoup stated that staff objected to a deferral for either of the cases. He said the previous deferral had been requested at the last minute, and the appellants had known of their violations since July 2001. He said the Board had deferred Ms. Diaz just two months ago because she stated she wanted to retain counsel, but failed to do so until the week prior to the hearing.

Mr. Shoup explained that such deferrals frustrated the comprehensive efforts of the County to address violations on Cinder Bed Road, as a multi-agency task force had aggressively been working on these violations. He stated that the subject property had been one of the worst cases of illegal junk yards the County had seen, and most of the land was in a flood plain causing environmental concerns.

Mr. Shoup stated that further delay would impact many of the people who were present to address the violations, which included members from the Department of Zoning Enforcement, the Fire and Rescue Department, the Department of Public Works and Environmental Services, and private citizens. He urged the Board to go forward with both hearings.

Daryl Varney, Senior Assistant to the Zoning Administrator, stated that he had initiated a tele phone call to Mr. During to verify that Ms. Diaz had sent out her legal notices. He said that Mr. During informed him that Ms. Diaz had approached him, but had not officially retained him. He said it was determined then that the legal notices had not been sent out and he told Mr. During that because the legal notification requirement had not been met, the public hearing could not proceed on January 8, 2002.

Mr. Varney stated that Mr. During told him that he would contact him to discuss the appeal after Ms. Diaz had officially retained him. He stated that he heard from Mr. During on the following day that he thought Ms. Diaz would retain him, but would have to call Mr. Varney back on Friday to confirm that, but had not called back.

Mr. Hammack clarified that Mr. During had not been retained until January 5, 2002. Mr. During replied that although Mr. Cifuentes understood some English, Ms. Diaz did not and explained his difficulties in obtaining an interpreter and the language barrier.

Mr. Hammack had a brief conversation with Mr. During regarding the availability and accessibility of interpreters through Fairfax County.

Mr. During stated that if Mr. Varney had told him that the case would definitely go forward, he would have told Ms. Diaz to locate an attorney who spoke Spanish to represent her and not jeopardize her appeal. He said that he relied upon the discussion he had with Mr. Varney, and believed he could get a continuance.

Mr. During stated that Mr. Cifuentes and Ms. Diaz had agreed to reimburse the County for the cost of re-advertising the cases. He said they showed good faith by retaining counsel and had asked for continuances



Mr. Hammack asked Mr. Shoup if Ms. Diaz had been present at the previous hearing where she was told she must send out her notices. Mr. Shoup replied that Ms. Diaz had not been present at the last hearing, that she had just presented the letter to his office.

Mr. Hart asked staff if Mr. Cifuentes specifically asked for a January hearing in a letter to the Board. Mr. Shoup replied that was correct.

Mr. Hart asked Mr. During that if Mr. Cifuentes had requested a January hearing date, and it had been granted, what had changed since October. Mr. During stated that there had been an unforeseen family emergency in October and when Mr. Cifuentes asked for the January date, he anticipated that he would go forward with the case. He said that unfortunately Mr. Cifuentes had returned to the United States and then due to circumstances, needed to go back to Guatemala immediately.

Ms. Gibb stated that it was not a simple matter of a delayed hearing, but the time involved with the re-advertisement meant the case would not be heard until the end of February. She said she saw a difference between the Diaz case and the Cifuentes case and had concerns that Mr. During did not understand that the appeal would be dismissed when he heard the case could not go forward. She said she believed Mr. Cifuentes had his own priorities when he left the country and that the Board should go forward on his hearing.

David Hudson, 7904 Hill Park Court, came forward to speak in opposition to the deferral. He stated that because he lived close by he wanted resolution to getting the junk cars removed. He said that he had been working on a development project to help the environment but the car fluids had seriously affected the environment in that area and he supported the task force in moving forward.

Mr. Hammack briefly summarized the information in the staff report for Mr. Cifuentes and stated that there had been significant reasons that the case go forward. He made the motion to deny the request for a continuance and for the Board to go forward with the hearing.

Mr. Pammel seconded the motion.

Mr. Hart stated that he supported the motion based on the number of interactions the Board had with Mr. Cifuentes over the past several months.

Vice Chairman Ribble stated that the motion had been made and seconded to go forward on the Cifuentes case, Appeal 2001-LE-205, which carried with a 6-0 vote. Mr. Kelley was absent from the meeting.

Vice Chairman Ribble called for Mr. Shoup to proceed with the case. Mr. Shoup stated that Susan Epstein would be presenting the case.

Susan Epstein, Assistant to the Zoning Administrator, presented the appeal as contained in the staff report. She stated that the violations included: use of property for dismantling, demolition and storage for approximately 750 to 1500 vehicles that were inoperable; the removal of trees; grading and filing of concrete in a flood plain without necessary approvals; vehicle storage /impoundment uses; and, vehicle repair without site plan approval or a Non-Residential Use Permit. Ms. Epstein noted that the property contained an additional 35 to 40 sheds/shacks/office trailers that had been constructed without building permits.

Ms. Epstein presented a short video presentation showing the nature of the violations. Joe Bakos, Zoning Enforcement, provided the narrative and explained the different aerial shots and dated photos.

Mr. Hart asked for clarification of the areas that he had seen in the photos. He asked if any of the buildings seen in the photos had building permits and Ms. Epstein replied that there were no permits or special exception permits on record for the property.

Mr. Hart asked if the majority of the buildings/huts were in the flood plain and Mr. Shoup replied that the flood plain violations were one of the violations that Mr. Cifuentes had been cited for.

Mr. Hart asked if there were sewer lines or septic fields approved by the Health Department for the property.

Mr. Bakos replied that the only record for this land was a stream crossing for the road, but no sanitation.

Mr. Hart asked if separate violations had been issued to the tenants on the subject property. Mr. Shoup replied that the tenants had not been issued violations because they seem to turn over so frequently; and therefore, they were targeting the owners of the properties. He stated that the violations before the Board were all Zoning violations and had nothing to do with Health Department issues.

Mr. Bakos clarified that the Health Department had issued a permit for the mobile cooking facility that was on the property.

Mr. Pammel asked staff if the surface photos had been taken on the perimeter of the property or on the property itself. Ms. Epstein replied that since September 6, 2001, all the photos had been taken from the perimeter.

Mr. Pammel stated that he noted that in the appeal application, Mr. Cifuentes stated he did not authorize staff to enter his property. Mr. Bakos replied that after that had been noted, staff had not been on the property unless they had gone to Mr. Cifuentes' trailer to ask permission.

Mr. During stated in his rebuttal that he had not had time to review all the information in the staff report and what had been just been presented.

Vice Chairman Ribble stated that Mr. Cifuentes could speak to the issue if he wanted.

Mr. During briefly spoke with Mr. Cifuentes, and stated that Mr. Cifuentes asked for time to allow him to get a translator to continue the hearing. Mr. During said that even though Mr. Cifuentes spoke some English, he had been unable to follow the hearing because of the language barrier.

Mr. Hammack asked if the hearing could be continued for one week in order for Mr. Cifuentes to obtain a translator. Mr. Shoup replied that it would not have to be re-advertised and was possible.

Mr. Hammack stated that the Board would like to go forward in hearing testimony, and gave Mr. During one week to prepare a rebuttal, and come back with a translator.

Vice Chairman Ribble called for speakers.

David Hudson came forward to speak and stated that he felt the expenses the appellant had spent were to further violate the zoning and flood plain laws of the County. He said he felt to allow a continuance based on an interpreter was not right, as Mr. Cifuentes had known about the violations since June and only obtained counsel two days prior to the hearing.

Dana Kauffman, 4520 Lanier Place, came forward to speak and stated that he was a member of the County Board of Supervisors. He said the approach to the problem had been comprehensive in nature, in terms of the area covered and that the staff had been dealing with multiple lots on Cinder Bed Road. He said it was also comprehensive in zoning and non-zoning safety issues, and that it was most comprehensive in the agencies involved and that local, state and federal agencies were all involved to move the cases forward. He requested that the Board reject the appeal to protect the legitimate interests of local area businesses and the residential neighborhoods.

Battalion Chief Mike Reilly, Fairfax County Fire and Rescue Department, came forward to speak in opposition to the appeal. He stated that he was in charge of the hazardous materials and fire investigative service section, and lead for his agency on the Cinder Bed Road Task Force. He explained how the Task Force worked together on the various violations. He stated that Mr. Cifuentes had divided his property into numerous sublots and then sublet those properties without regard for what the businesses do. Chief Reilly stated there had been many fire code violations in that area, and his department had worked diligently to protect the people in that area.

Mr. Shoup stated that the Department of Public Works and Environmental Services (DPWES) had also issued notices of violations and Penny Rood was present to speak should the Board have any questions for her.

Page 147, January 8, 2002, (Tape 1 and 2), WILFREDO O. CIFUENTES, A 2001-LE-025, continued from Page 146

Mr. Hammack made a motion to continue the hearing on January 22, 2002, at 9:30 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 147, January 8, 2002, (Tape 2), Scheduled case of:

9:30 A.M. GLADIS ONDINA DIAZ AND RAMIRO AREVALO, A 2001-LE-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard/storage yard use on the subject property in violation of various Zoning Ordinance provisions. Located at 7804 Cinder Bed Rd. on approx. 1.0 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 14. (Def. from 11/27/01 for notices).

Vice Chairman Ribble stated that he had a request for dismissal for this case.

Mr. Shoup stated, as he had previously testified, the legal notices had not been done and he felt the appeal should be dismissed.

Mr. During again explained the difficulties in obtaining an interpreter for Ms. Diaz, and asked the Board to consider a continuance.

Ms. Gibb clarified that Mr. During would send out the legal notices and Ms. Diaz had agreed to pay for the re-advertising if the Board allowed a continuance. Mr. During replied that was correct.

Mr. Hart asked Mr. Shoup what the earliest time available after re-advertising was that the appeal could be heard. Mr. Shoup replied that February 19, 2002, would be the earliest date.

Mr. Pammel made a motion that the Board dismiss appeal A 2001-LE-027.

Mr. Hammack asked who was the other person named in this case. Mr. Bakos replied that it was an alias used by Ms. Diaz. The Board had a brief discussion of the name of the person who originally filed the appeal and the legalities involved without the other named person present for the hearings.

Penelope Rood, DPWES, came forward to speak and stated that earlier land records had been determined to be incorrect. She stated that Ms. Diaz had a land contract with the actual landowner, Sharif Shafik, 7804 Cinder Bed Road. Ms. Rood stated that Ms. Diaz had an agreement to pay Mr. Sherik in three or four payments for the property and tax records now reflected this. She said she was unaware of anyone named Ramiro Arevalo and he had never been present when her department hand delivered items to Ms. Diaz.

Mr. During clarified that Mr. Arevalo was the husband of Ms. Diaz and he was out of the country and would not be able to attend any hearings. He stated that Ms. Diaz name was Gladis Odina Diaz and Gloria was not her name. He stated that Mr. Arevalo had signed the appeal before he left the country.

Mr. Hammack seconded the motion for the purpose of discussion.

Ms. Gibb stated that she could understand how Mr. During might have received the wrong message about the hearing.

Mr. Hart made a substitute motion to continue the hearing until February 19, 2002, based upon the appellants stipulation that they would pay for the advertising and be responsible for the notices.

Mr. Hammack seconded the motion which carried by a vote of 4-1. Mr. Pammel voted against the motion. Chairman DiGiulian had recused himself from the hearing and Mr. Kelley was absent from the meeting.

Mr. Hart asked staff to send a certified letter to Mr. Shafik to inform him of the legal proceedings and Mr. Shoup agreed to do that.

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Page 148, January 8, 2002, (Tape 2), After Agenda Item:

Additional Time Request  
Trustees of Mount Vernon Congregation of Jehovah's Witness, SP 99-V-013

Mr. Pammel moved to approve the Additional Time Request for the Trustees of Mount Vernon Congregation of Jehovah Witness, SP 99-V-013 for an additional 12 months to January 6, 2003. Mr. Ribble seconded the motion, which carried with a 6-0 vote. Mr. Kelley was absent from the meeting.

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Page 148, January 8, 2002, (Tape 2), After Agenda Item:

Additional Time Request  
Ajey Bargoti, SP 97-Y-014

Mr. Pammel moved to approve the Additional Time Request for Ajey Bargoti, SP 97-Y-014. Mr. Hart and Mr. Ribble seconded the motion, which carried with a 6-0 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 11:59 a.m.

Minutes by: Judith A. Gobbi

Approved on: July 9, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 15, 2002. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Nancy Gibb was absent from the meeting.

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

Page 149, January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE A. & MAHA W. KLAM, VC 01-L-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.3 ft. from side lot line. Located at 5809 Ash Dr. on approx. 8,446 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1 ((6)) (2B) 42.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence Klam, 5809 Ash Drive, Springfield, Virginia, replied that it was.

Charles Burnham, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to place an addition 8.3 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 1.7 feet was requested.

Mr. Klam presented the variance request as outlined in the statement of justification submitted with the application. He said the reason for constructing the addition was that his house was small and that he had 3 teenagers.

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

Mr. Pammel moved to approve VC 01-L-183 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

LAWRENCE A. & MAHA W. KLAM, VC 01-L-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.3 ft. from side lot line. Located at 5809 Ash Dr. on approx. 8,446 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1 ((6)) (2B) 42. 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 15, 2002; 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 only 70 feet wide.

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

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

- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Alexandria Surveys International, LLC dated October 17, 2001, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion, which carried by a vote of 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 January 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 150, January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      VERNON R. & MARY JO FREDERICK, VC 01-B-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.9 ft. from front lot line and 9.2 ft. from side lot line. Located at 5525 Eastbourne Dr. on approx. 11,200 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((6)) 483.

Page 151, January 15, 2002, (Tape 1), VERNON R. & MARY JO FREDERICK, VC 01-B-175, continued from Page 150

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vernon Frederick, 5525 Eastbourne Drive, Springfield, Virginia, replied that it was.

Denice Thomas, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to the dwelling, to be located 25.9 feet from the front lot line and 9.2 feet from the west side lot line. A minimum 30-foot front yard and a minimum 12-foot side yard is required; therefore, a 4.1-foot variance to the required front yard and a 2.8-foot variance to the required side yard were requested.

Mr. Frederick presented the variance request as outlined in the statement of justification submitted with the application. He said the garage was needed to provide protection for his vehicles. Mr. Frederick stated that the structure would be aligned with the existing carport.

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

Mr. Hart moved to approve VC 01-B-175 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VERNON R. & MARY JO FREDERICK, VC 01-B-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.9 ft. from front lot line and 9.2 ft. from side lot line. Located at 5525 Eastbourne Dr. on approx. 11,200 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((6)) 483. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 15, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is only 80 feet wide.
4. The topographical problem is reflected in the photographs, which shows that the lot drops in the rear.
5. A number of variances had been approved in the neighborhood recently.
6. The one car garage addition has two corners that extend beyond the building restriction line, but they were relatively minimal intrusions into the minimum yard.
7. The variance request was of a smaller magnitude than some of the other variance approved in the subdivision.
8. There was no opposition and the variance would be in keeping 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

Page 152, January 15, 2002, (Tape 1), VERNON R. & MARY JO FREDERICK, VC 01-B-175, continued from Page 151

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 proposed garage addition shown on the plat prepared by Arencibia Architects Inc., signed on October 25, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hammack 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 January 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 152, January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. EDWARD J. & KIRSTEN M. KENNEY, TRUSTEES, VC 01-D-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.56 ft. from side lot line. Located at 7112 Elizabeth Dr. on approx. 19,208 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 49.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning



Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 3.56 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 8.44 feet was requested.

Ms. Strobel, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the request was to permit the construction of a garage 3.56 feet from the property line. Ms. Strobel said the property was part of an existing subdivision and the house was built in 1955. She said the applicants proposed to convert an existing carport into a garage as part of their overall plans to renovate the house. Ms. Strobel submitted a photograph of the existing home. She stated that the lot was exceptionally narrow, with a width of 90 feet. Ms. Strobel said the majority of the surrounding lots had a width of 110 feet. She said the existing carport was built at an odd angle to preserve a tree that had since died and been removed. Ms. Strobel stated that the existing driveway would remain and the garage would improve the appearance of the property. She submitted letters of support.

Mr. Pammel asked if the garage width would be 24.6 feet. Ms. Strobel replied yes. Mr. Pammel noted that the size of the garage was considerably larger than the standard. He said he was not disposed to granting anything that would encroach closer than 5 feet as a minimum. Mr. Pammel asked if the applicant would be willing to reduce their request so that the minimum yard width would be 5 feet or greater. Ms. Strobel stated that she had discussed that issue with the applicant and it was her understanding that would not allow the applicants a sufficient width for the construction of a garage. She said she would ask the applicants that question again.

Mr. Hart asked if something projected into the space where the garage would be. Ms. Strobel replied that it was chimney.

Mr. Hart asked how much the chimney extended into the garage. Ms. Strobel replied that Mr. Denehy, architect for the project, could better respond to the question.

Mr. Denehy stated that the fireplace extended 2 feet into the garage. He said the inside of the garage was 20 feet and according to graphic standards, a minimum sized two car garage was 20.5 feet to be able to open the car doors.

Mr. Hart asked what would happen to the existing carport. Mr. Denehy replied that it would be demolished.

Chairman DiGiulian called for speakers.

Carol Wessell, 7112 Elizabeth Drive, and Kathryn Rozier, 7111 Elizabeth Drive, came forward to speak in support of the application. Their reasons for support were that the lot was narrow, the garage would be compatible with the neighborhood, the garage would significantly improve the appearance of the property, and there would be no adverse affects to the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-D-174 for the reasons noted in the Resolution.

Mr. Hart stated that he would support the motion based on the testimony about the chimney, the way the house was positioned on the lot, and the photographs submitted.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

EDWARD J. & KIRSTEN M. KENNEY, TRUSTEES, VC 01-D-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.56 ft. from side lot line. Located at 7112 Elizabeth Dr. on

Page 154, January 15, 2002, (Tape 1), EDWARD J. & KIRSTEN M. KENNEY, TRUSTEES, VC 01-D-174, continued from Page 153

approx. 19,208 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 49. 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 15, 2002; 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 narrow.

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

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

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

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

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

1. This variance is approved for the location of a garage addition, shown on the plat prepared by Laura L. Scott, dated July 16, 2001, as revised through October 1, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The garage addition shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion, which carried by a vote of 4-1-1. Mr. Pammel voted against the motion. Mr. Hammack abstained from the vote, and Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 155 January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES DANIEL ROTH, VC 01-L-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 28.5 ft. from front lot line of a corner lot. Located at 7601 Beulah St. on approx. 1.11 ac. of land zoned R-1. Lee District. Tax Map 91-3 ((1)) 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. Charles Daniel Roth, 7601 Beulah Street, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 28.5 feet from the front lot line of a corner lot. A minimum front yard of 40 feet is required; therefore, a variance of 11.5 feet was requested.

Mr. Roth presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose an existing open porch to provide a third bedroom and second bathroom in his home.

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

Mr. Kelley moved to approve VC 01-L-167 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CHARLES DANIEL ROTH, VC 01-L-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 28.5 ft. from front lot line of a corner lot. Located at 7601 Beulah St. on approx. 1.11 ac. of land zoned R-1. Lee District. Tax Map 91-3 ((1)) 36. 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 15, 2002; and

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

1. The applicant is the owner of the land.
2. The placement of the dwelling on the lot is peculiar.
3. The applicant's statement of justification indicates compliance with the requirements for variance.

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

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

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

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

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

1. This variance is approved for the location of an addition, shown on the plat prepared by Larry N. Scartz, dated August 18, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January

23, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LOUIS GODLA, VC 01-D-188 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line. Located at 1212 Raymond Ave. on approx. 24,077 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 64.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Louis Godla, 1212 Raymond Avenue, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 7.2 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4.8 feet was requested

Mr. Godla presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose the existing carport to provide safety for his handicapped wife.

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

Mr. Hammack moved to approve VC 01-D-188 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

LOUIS GODLA, VC 01-D-188 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line. Located at 1212 Raymond Ave. on approx. 24,077 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 64. 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 15, 2002; 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 required standards for a variance.
3. There are converging lot lines towards the front of the property.
4. Only a triangular portion of the proposed enclosure requires the variance.
5. The character of the zoning district would not be changed.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 George M. O'Quinn, dated October 18, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage addition shall be architecturally compatible with the existing dwelling.
4. Prior to approval of final inspections, the shed, located on the east side of the property, shall be demolished or moved to a location in conformance with the Zoning Ordinance.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 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 January 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 158, January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SANG T. AND BONG Y. KIM, SP 01-M-060 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building

location to permit building to remain 3.4 ft. from rear lot line. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Concurrent with VC 01-M-168). (Deferred from 12/18/01 for decision only)

9:00 A.M. SANG T. AND BONG Y. KIM, VC 01-M-168 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 0.0 ft. from front lot line. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Concurrent with SP 01-M-060). (Deferred from 12/18/01 for decision only)

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

Mavis Stanfield, Staff Coordinator, indicated that the application had been deferred from December 18, 2001, for decision only. She said proposed revised development conditions had been distributed to the Board along with the applicants' proposed changes. Ms. Stanfield stated that staff had no objections to the applicants' proposed changes to the revised development conditions.

Mr. Lawrence stated that the proposed changes were language changes added to provide clarification of the conditions.

Mr. Pammel stated that the conditions did not address the height violation. Mr. Lawrence stated that the height was not in violation of the Ordinance.

Mr. Pammel said he was concerned that the construction was not consistent with the plans. Mr. Lawrence replied that was done by the previous owners.

Mr. Pammel said there was a set of circumstances that developed over time where plans were submitted and what happened after that wasn't consistent with the plans and it wound up that they exceeded the requirements of the Ordinance in several instances. He said he was not pleased to be confronted with an application that was trying to correct a fraudulent situation that occurred in the past. Mr. Pammel said sometimes the redress on these issues is to go back to the people who created the problem, but he also understood that the applicant was not a party to that and that there was a hardship involved. Mr. Pammel stated that there was also a very strong opposition letter from one of the adjacent property owners bringing out all of the information that transpired with the prior owner.

Mr. Pammel noted that there was a letter from Jane Kelsey, Jane Kelsey and Associates, with respect to an allegation that was made by the staff that Mr. Smith, who represented the prior owner, had provided fraudulent information and she wanted the record to be clear that Mr. Smith had always been an honest and reputable person. Mr. Pammel said he echoed that sentiment and he had worked with Mr. Smith for many years. He said it was unfortunate that allegation came out of the County that he might have been the party responsible for the situation. Mr. Pammel said he did not feel that Mr. Smith was the party responsible for the situation.

Mr. Pammel moved to approve SP 01-M-060 for the reasons noted in the Resolution.

Mr. Hart stated that there were a number of speakers and letters and he wanted to make clear that a number of the issues addressed in that information was not before the Board. He said there was opposition to the second use in the building and the Board was not making a determination on the second use. Mr. Hart said a second use could be a by-right use in a retail building, in a C-5 District, but they would need to demonstrate adequate parking or they would not be able to obtain a Non-Residential Use Permit. He said the parking objection was related to the second use. Mr. Hart stated that with the removal of the mezzanine, it brought the FAR down to what the C-5 District would require. He said he would support the motion.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANG T. AND BONG Y. KIM, SP 01-M-060 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit

reduction to minimum yard requirements based on error in building location to permit building to remain 3.4 ft. from rear lot line. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Concurrent with VC 01-M-168). (Deferred from 12/18/01 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 January 15, 2002; 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 building, as shown on the plat prepared by Theodore D. Britt, dated June 5, 2001, as revised through September 27, 2001, submitted with this application and is not transferable to other land.
2. The applicant will remove the portion of the second story mezzanine necessary to bring the structure into compliance with the C-5 floor area ratio.
3. The applicant will screen the fence located adjacent to the northern lot line by planting trees and/or shrubs within the 4.5 foot wide area situated between the eastern edge of the building and the eastern property line. The species, size and number of the vegetation shall be subject to approval by the Urban Forestry Division of the Department of Public Works and Environmental Services



(DPWES).

- 4. No outdoor storage shall be permitted on-site.

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. A Non-Residential Use Permit (Non-RUP) shall be required to implement this special permit approval for the existing use. The applicant shall be responsible for obtaining the required Non-RUP through established procedures, and this Special Permit shall not be valid until such required Non-RUP has been obtained.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 90 days after its approval, unless a Non-RUP has been issued for the existing use in accordance with these conditions.

Mr. Hart 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 January 23, 2002. 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 01-M-168 for the reasons noted in the Resolutions.

Mr. Pammel said there was nothing in the variance resolution that said yes or no to a second use of the property. He said the applicant would have to present a plan to the County to ensure that the parking requirements were met.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

SANG T. AND BONG Y. KIM, VC 01-M-168 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 0.0 ft. from front lot line. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Concurrent with SP 01-M-060). (Deferred from 12/18/01 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 January 15, 2002; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants met the criteria for a 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 parking spaces, as shown on the plat prepared by Theodore D. Britt, dated June 5, 2001, as revised through September 27, 2001, submitted with this application and is not transferable to other land.

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

Mr. Hart seconded the motion, which carried by a vote of 6-0. 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 January 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 162 January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CARLOS W. OLIVOS, VC 01-Y-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6705 Folkers La. on approx. 10,609 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-1 ((13)) (5) 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. Carlos Olivos, 6705 Folkers Landing Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a fence higher than 4 feet in height to remain in the front yards of corner lot. A maximum fence height of 4 feet is required; therefore, a variance of 2.2 feet was requested for the existing fences.

Page 163 January 15, 2002, (Tape 1), CARLOS W. OLIVOS, VC 01-Y-166, continued from Page 162

Mr. Hart said the fence on Lot 15 appeared to be taller and the 3 fences across the street were about the same, higher than 4 feet. Mr. Hart asked if any of those fences were in violation.

Mr. Bernal stated that all the fences were in violation, but the only complaint received was about the applicant's fence.

Mr. Olivos presented the variance request as outlined in the statement of justification submitted with the application. He said he purchased the property 3 years ago and the builder built the fence to match the neighborhood. Mr. Olivos said the fence did not obstruct any views.

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

Mr. Hart moved to approve VC 01-Y-166 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARLOS W. OLIVOS, VC 01-Y-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6705 Folkers La. on approx. 10,609 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-1 ((13)) (5) 18. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 15, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot has double front yards elongated in such a way that more of the back yard is closer to the street rather than being behind the house.
4. To have a functional back yard for the house, the applicant has fenced off what is by the Zoning Ordinance a front yard.
5. The fence does not obstruct vision on Mount Olive Road.
6. The fence is lower than the identical fence on Lot 15 and is comparable to the fences of the reverse front yard houses across the street.
7. There is no detriment to adjacent property owners.

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

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

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

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

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

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

1. This variance is approved for the location of a fence as shown on the plat prepared by Thomas G. Gilbert, dated August 10, 2001, as 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. 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 January 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 164, January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. EDGAR ZAMBRANA, SP 01-P-059 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 7.7 ft. from side lot line. Located at 2852 Stuart Dr. on approx. 8,261 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-3 ((15)) 45.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edgar Zambrana, 2852 Stuart Drive, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an addition to remain 7.7 feet from a side lot line. A minimum side yard of 10 feet is required; therefore, a modification of 2.3 feet was requested for the room addition.

Mr. Zambrana presented the variance request as outlined in the statement of justification submitted with the application. He said he did not know that permission was needed to build the addition.

Mr. Hammack asked if the construction was completed according to the building code requirements. Mr. Zambrana stated that he did not know.

Mr. Hammack asked if there was any electricity or plumbing. Mr. Zambrana replied no.

Mr. Hammack asked what the addition was used for. Mr. Zambrana said the addition was used to store toys and for a place to put the dog.

Mr. Hammack asked staff what would happen if the applicant could not obtain a building permit. Mr. Bernal replied that in order to keep the addition, the applicant would have to meet the building code requirements or remove the addition.

Mr. Hammack asked the applicant whether he understood that he must meet the building code requirements. Mr. Zambrana replied yes.

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

Mr. Ribble moved to approve SP 01-P-059 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EDGAR ZAMBRANA, SP 01-P-059 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 7.7 ft. from side lot line. Located at 2852 Stuart Dr. on approx. 8,261 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-3 ((15)) 45. 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 15, 2002; and

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

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

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

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate

vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This Special Permit is approved for the location of an addition as shown on the plat prepared by George M. O'Quinn, Land Surveyor, dated August 2, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained and approval of final inspection shall be obtained.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 23, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 166, January 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LINDA & EDWARD JARVIS, SP 01-D-062 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1353 Cassia St. on approx. 8,570 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((8)) (3) 31.

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 Jarvis, 1353 Cassia Street, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a modification to the limitations on the keeping of animals. The applicant requested that they be permitted to keep 4 dogs on a lot of less than the required 12,500 square feet. The Zoning Ordinance stated that one may keep dogs but in accordance to the minimum lot size.

Mr. Jarvis presented the request as outlined in the statement of justification submitted with the application. He said they had a 6-foot fence in the back yard, but the dogs were kept inside 95% of the time. Mr. Jarvis said the dogs were never walked on another's property and he had never received any complaints that the dogs were causing trouble. He said most of the neighbors were in support of the application. Mr. Jarvis stated that the dogs were properly licensed and had all their shots.

Mr. Hammack noted a letter in opposition which indicated that the dogs were used for commercial purposes. Mr. Jarvis said they were not using the dogs for commercial purposes; however, one of the dogs was bred once.

Mr. Hammack asked how long ago was the dog bred. Mr. Jarvis said approximately 3 years ago.

Chairman DiGiulian called for speakers.

Linda Jarvis, applicant, stated that when they purchased the dog, the contract stated that they had to breed the dog once, but they did not breed the dog for commercial purposes. She said they were unaware that you could not keep 4 dogs. Ms. Jarvis stated that the complaint was a personal issue because she had reported a neighbor having a pool that she was not suppose to have.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 01-D-062 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

LINDA & EDWARD JARVIS, SP 01-D-062 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1353 Cassia St. on approx. 8,570 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((8)) (3) 31. 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 15, 2002; and

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

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

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 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, 1353 Cassia Street (8,650 square feet), shown on the plat prepared by Larry N. Scartz, dated October 23, 2001, 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 daily and shall be disposed of in a method approved by the Health Department.
- 5. The dogs shall be supervised at all times while in the yard.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 23, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 168, January 15, 2002, (Tape 1), Scheduled case of:

9:30 A.M. DONALD E. CRUMP AND CHESLEY CRUMP, A 2000-SP-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance. Appeal of determination that previously cited violations regarding the addition of structures and storage display areas on the appellants' property continue. Located at 7600 Clifton Rd. on approx. 2.89 ac. of land zoned C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 15. (moved from 1/16/01 and 4/17/01) (Def. From 8/14/01)

Chairman DiGiulian recused himself from participating in the public hearing because he was working on the appellant's site plan.

Vice Chairman Ribble asked if there was a deferral request received from the appellants.

William Shoup, Deputy Zoning Administrator, stated that there was no request for deferral. He said Mr. Tom Williams sent staff a letter stating that he no longer represented the appellants.

Jayne Collins Reale, Zoning Administration Division, stated that the appeal was of a determination that previously cited violations regarding the addition of structures and storage display areas on the property continued. Ms. Reale said at issue was a greenhouse, a plant shade structure, and a trailer with an attached deck, which existed on the property without site plan or building permit approval. The greenhouse and the plant shade structure were not located in compliance with the minimum yard requirements. She said the approved site plan reflected that the structures were to be removed and until they were, it was staff's position that the property was not in compliance. Ms. Reale stated that an approved site plan did not bring the property into compliance because the structures would need to be removed from the site plan to be in compliance. She said a letter received in August represented that all the structures would be removed. Ms. Reale stated that inspections on January 14, 2002, reflected that the greenhouse had been removed but the plant shade structure, the trailer, and the deck were still present. She said the current violation had existed for 1½ years and the structures had been on the property since 1994.

Brian Bennett, 12000 Henderson Road, Clifton, came forward.

Mr. Kelley asked the appellant whether counsel represented him. Mr. Bennett replied not by Mr. Williams. He said Ken Sanders sent staff a letter requesting a deferral the prior week, but he was currently out of town.

Mr. Kelley asked Mr. Bennett whether he had a copy of the deferral request. Mr. Bennett replied no.

Ms. Reale stated that staff never received a deferral request.

Mr. Bennett stated that Mr. Sanders originally represented the appellants and Mr. Williams took over and he had a difference of opinion with Mr. Williams.

Vice Chairman Ribble stated that staff should contact Mr. Sander's office to receive a faxed copy of the deferral request.

Mr. Shoup stated that in November, the appellants represented that all the structures would be removed by January and that was the reason they agreed to a deferral then.

Mr. Bennett stated that there were two letters sent to staff by Mr. Williams; however, he only agreed with the first letter. He said he never saw the second letter and that was what stemmed the controversy.

Mr. Hart said he thought the issue would be resolved by January 14, 2002.

Mr. Hammack stated that he also thought there would be a non-issue because the items would be removed. He said the violation was long standing.

Mr. Kelley stated that the letter from Mr. Williams was only a few days old and that the appellant should have representation.

The Board decided to proceed to the next scheduled case while waiting for staff to contact Mr. Sander's office.

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9:30 A.M.      **THANH V. TRAN**, A 2001-SU-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has performed land disturbing activities, to include the installation of approx. 5,000 sq. ft. of concrete pad areas and the removal of approx. 2.5 ac. of vegetation and ground cover, without the required approval of a grading plan and is, therefore, in violation of Zoning Ordinance provisions. Located at 7605 Bull Run Dr. on approx. 5.10 ac. of land zoned R-C and WS. Sully District. Tax Map 73-1 ((2)) 13. (moved from 2/12/02)

Mr. Hart gave a disclosure which caused him to recuse himself from the public hearing.

Scott Helsel with the law firm of Arnold and Porter came forward and indicated that he represented the appellant.

Maggie Stehman, Zoning Administration Division, stated that at issue was a determination that the appellant performed land disturbing activities including the installation of approximately 5,000 square feet of concrete pads and the clearing of approximately 2.5 acres of understory or vegetation, which amounted to 100,900 square feet in the wooded area of the lot, without an approved grading plan, therefore was in violation of Sect 2-601 of the Zoning Ordinance as well as Sect 2-603 of the Ordinance. Ms. Stehman presented photographs of the property to the Board. She said Chapter 104 of the County Code defined land disturbing activities. It does allow minor residential landscaping and gardening types of activities; however, it also says in that definition that a disturbance of over 2500 square feet of commercial or non commercial uses would not be allowed without an approved erosion and sediment control plan. Ms. Stehman stated the appellant had disturbed more than 100,000 square feet in clearing the understory, and staff believed the appellant was in violation of Sect. 2-603. She said the appeal was for the land disturbing activities and any other activities on the property were not relevant.

Mr. Hammack stated that staff took the position that concrete was deemed to be similar to fill material and asked where that was defined in the Code. Ms. Stehman stated that was not in the definitions in the Zoning Ordinance but was a long-standing interpretation of the Department of Public Works and Environmental Services (DPWES). She said Assad Ayoub from DPWES could probably speak to exactly where the definition of fill was located.

Mr. Ayoub, Director of Environmental Facilities Review Division, stated that their understanding of the Code was that any activity that removed the vegetation was considered land disturbance activity. He said with this appeal, pouring a concrete slab on top of topsoil or other vegetation was considered land-disturbing activity, regardless of the depth or the size.

Mr. Hammack asked where that was located in the Code. Mr. Ayoub replied in Sect. 104-1-7 of Chapter 104 of Fairfax County Code. Mr. Ayoub quoted the Code by stated that "Land disturbing activities means any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth."

Mr. Shoup said that the Notice of Violation stated that concrete was considered similar to fill material because when you add 4 inches of concrete in a slab this size you have added new material to the land. He said it has been an interpretation that concrete was most similar to fill material.

Ms. Stehman said staff was not maintaining that the concrete was soil, but that in order to pour the concrete, the soil was disturbed by doing some excavation and some leveling in preparation for the pouring of the concrete.

Mr. Hammack asked staff how they computed the volume of soil that was disturbed.

Ms. Stehman replied that the area that was covered was about 5,000 square feet and given the 2,500 square foot limitation in the Zoning Ordinance, that was enough to determine that there was land disturbing activities including the addition and removal of soil.

Mr. Hammack asked if staff had evidence that the activity caused any erosion. Joe Bakos, Zoning Enforcement Division stated that staff received complaints from the Northern Virginia Park Authority, directly behind this location, that runoff and sediment from this land disturbing activity adversely affected one of their grades.

Mr. Hammack asked why clearing did not fall into the exemption of minor land disturbing activities since no trees were removed and none were dead or dying so there did not appear to be any damage to the root system.

Ms. Stehman replied that the definition of land disturbing activities related to erosion, by wind or water, movement of sediment into State waters and onto lands in the Commonwealth, including but not limited to the clearing, grading, excavating, transporting, filling of land except that the term shall not include minor land disturbing activities such as gardens and individual landscaping, repairs and maintenance work. She said Number 10 under that same definition was; "disturbed land areas for commercial or non-commercial uses of 2,500 square feet or less."

Mr. Helsel, agent for the appellant, stated that he served a Freedom of Information Act (FOIA) request on the Zoning Administrator and was provided documents in connection with the issue of complaints from the Northern Virginia Area Park Authority. He said one was an email from Joseph Bakos to Steve Mason, talking about a phone call from a gentleman named Ernest Kyle. Mr. Helsel stated that the email stated that there was a concern by Northern Virginia Area Park Authority that the clearing and grading activities and an existing fence encroached onto the Park Authority property. He said there was no mention about any observation by the Park Authority of any erosion or sedimentation problems observed by the Park Authority. Mr. Helsel said in connection with another FOIA request served on DPWES, he received a copy of a document talking about an investigation done which revealed that there was no violation of 2,500 square feet or 18 inches of earth modified.

Mr. Helsel said there were two issues that were important in deciding this appeal. The first was whether there was any evidence that there was any removal or addition of soil that was not permissible under the Zoning Ordinance. He said there was no evidence of removal or addition of soil. Mr. Helsel stated that he had an affidavit from the concrete company that provided the concrete that they did not do any soil addition or removal.

Mr. Helsel stated that there was no evidence that the appellant engaged in any grading of his property nor was there evidence that there was erosion or sedimentation problems seen or observed as a result of the pouring of the concrete, which, he said, would render Sect. 2-601.3 completely irrelevant. Mr. Helsel said with regard to the clearing activities, the appellants cleared some brush and fallen timber out of what was otherwise a wooded property so that he could enjoy the space on his property and use it for residential use.

Chairman DiGiulian called for speakers.

Laura Hargis, 7600 Bull Run Drive; Edward Glade, 7404 Bull Run Drive; Judith Heisinger, 7401 Bull Run Drive; Carol Hahn, 6500 Harvest Mill Court came forward to speak in support of the appeal

They expressed concerns relating to viewing land-disturbing activities; clearing of vegetation; the long history of continued zoning violations; the appellant not meeting permit requirements; health issues; violation of local property covenants; lack of a grading plan or erosion controls; and degradation of stormwater runoff.

Ms. Stehman stated that County staff was particularly concerned with the scale of the disturbance. She said since there was no minimum you could have a disturbance that was less than an inch and it would still be a disturbance of more than 2500 square feet. Ms. Stehman stated that a grading plan was required; however, the appellant had not obtained a grading plan, which was an issue as well as the amount of land disturbing activity. She said the appellant disturbed over 5000 square feet with the concrete pads and over 100,000 square feet with the clearance of the understory which was done without the appropriate County approvals.

Mr. Helsel said the appellant was making a good faith effort to resolve all the issues that were arising with regard to the use of this property. He said he appreciated staff's acknowledgement that those issues really were not germane to the current appeal.

Chairman DiGiulian closed the public hearing

Mr. Pammel stated that any activities associated similarly with respect to the property, such as the sewage issue, would be issues that would be addressed at such time as a special permit for a place of worship for this property was submitted to the County. He said that in looking very carefully at the Ordinance and using clear and natural meaning, he would so move that Sect. 2-601 was not applicable. Mr. Pammel said it was

his thought that plants did not grow in concrete and therefore you could not use concrete in as loose form or solid form as a medium in which plants grew to meet the definition or the standard set forth in 601 and from that reading and that definition, 601 did not apply.

Mr. Pammel said he also had a problem with 603's clear and natural reading which stated that adequate controls of erosion and sedimentation of both a temporary and permanent nature shall be provided by the property owner during all phases of clearing, filling, grading, and construction. He said what had been built on the property would be considered to be construction. Therefore, it would be his interpretation that 2-603 did apply. Mr. Pammel moved to reverse the Zoning Administrator with respect to their interpretation and action under Sect. 2-601 but that this Board affirm the requirement under Sect. 2-603, that a grading plan was necessary and did require the approval of the County.

Mr. Hammack seconded the motion for purposes of discussion.

Chairman DiGiulian stated that his tendency would be to uphold the Zoning Administrator in both cases. He said he did not understand how the appellant could disturb that amount of land without any kind of permits.

Mr. Hammack stated that after reading Sect. 2-603 again, he would agree that the definition included construction on site and he felt that was applicable. He said the County had not shown that soil was removed in an area exceeding 2,500 square feet.

Mr. Pammel stated that based on the interpretation that he presented in his comments relative to soil, the fact that the applicant indicated that no soil was brought to the site, nor any removed, it would be his motion that the Board reverse the Zoning Administrator with respect to their interpretation of Sect. 2-601 of the Zoning Ordinance limitation on removal or addition of soil.

Mr. Hammack seconded the motion. The motion failed by a vote of 2-3. Chairman DiGiulian, Mr. Ribble, and Mr. Kelley voted against the motion.

Mr. Pammel moved that the Board uphold the interpretation of the Zoning Administrator with respect to the Zoning Administrator's interpretation of Sect. 2-603 erosion and sediment control regulations. Mr. Hammack seconded the motion. The motion carried by a vote of 5-0, and the Zoning Administrator's determination was upheld in both instances.

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9:30 A.M. DONALD E. CRUMP AND CHESLEY CRUMP, A 2000-SP-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance. Appeal of determination that previously cited violations regarding the addition of structures and storage display areas on the appellants' property continue. Located at 7600 Clifton Rd. on approx. 2.89 ac. of land zoned C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 15. (moved from 1/16/01 and 4/17/01) (Def. From 8/14/01)

Vice Chairman Ribble recalled A 2000-SP-029. William Shoup, Deputy Zoning Administrator, said a letter had been faxed over from Mr. Sander's office, which indicated that he was representing the appellant and that he was requesting a deferral until after January 31, 2002.

Jayne Collins Reale, Zoning Administration Division, stated that the letter was faxed to a "978" exchange number which was not a government center complex number.

Vice Chairman Ribble indicated that explained why staff had not received a letter, but that one existed.

Mr. Kelley moved to defer to a date after January 31, 2002. Mr. Hammack seconded the motion for purposes of discussion.

Mr. Hammack said the citizens present should be allowed to speak, because the appeal had been going on for a long time and this was a last minute change.

Mr. Hart stated that he would normally like to allow a deferral to accommodate the appellant. He said there

Page 172, January 15, 2002, (Tape 1), DONALD E. CRUMP AND CHESLEY CRUMP, A 2000-SP-029, continued from Page 171

had been a number of deferrals in the case. Mr. Hart suggested that the Board consider allowing Mr. Sanders an opportunity to watch the tape and to prepare and handle the rest of the appeal at a later date, but at least accommodate the people who had taken off work.

Vice Chairman Ribble called for speakers to the deferral.

Jane McWilliams, 7626 Clifton Road, stated that the appeal had gone on for a long time. She said that there was very little notification given to the neighbors about each deferral, which made it hard to organize the neighbors to appear at the public hearing. Ms. McWilliams suggested that the Board not defer the case.

Mr. Pammel said if the public hearing was split between two days, that would not offer the give and take and could be grounds for an unfair public hearing.

Mr. Hammack moved to continue A 2000-SP-029 to February 12, 2002, at 9:30 a.m. with no further continuances. Mr. Pammel seconded the motion, which carried by a vote of 4-1. Mr. Hart voted against the motion, Chairman DiGiulian recused himself from the public hearing, and Ms. Gibb was absent from the public hearing.

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Page 172, January 15, 2002, (Tape 1), After Agenda Item:

Approval of January 8, 2002 Resolutions


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

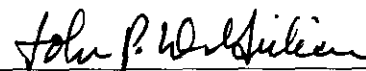
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As there was no other business to come before the Board, the meeting was adjourned at 12:08 p.m.

Minutes by: Regina Thorn Corbett

Approved on: April 30, 2002

  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 22, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel; and John Ribble.

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

Page 173, January 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M.        KENNETH D. & LYNN M. SCHWARZ, VC 01-H-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from rear lot line. Located at 9527 Rockport Rd. on approx. 10,959 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 38-1 ((17)) 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. Lynn M. Schwarz, 9527 Rockport Road, Vienna, Virginia, replied that it was.

Mary Ann Godfrey, Staff Coordinator, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a screened porch to be located 14.0 feet from the rear lot line. The Zoning Ordinance requires a 25 foot rear yard; therefore, a variance of 11 feet was requested.

Ms. Schwarz presented the variance request as outlined in the statement of justification submitted with the application. She reaffirmed the information included in the statement of justification.

Mr. Hart asked the applicant why the addition could not be located on the left-hand side of the deck as opposed to the right-hand side. Ms. Schwarz explained that the kitchen was located at the left-hand side of the deck and to locate the porch in that area, the kitchen would need to be extended and it would cost a sizable amount of money.

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

Mr. Hart moved to approve VC 01-H-191 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH D. & LYNN M. SCHWARZ, VC 01-H-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from rear lot line. Located at 9527 Rockport Rd. on approx. 10,959 sq. ft. of land zoned R-Hunter Mill District. Tax Map 38-1 ((17)) 18. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 22, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is on a cul-de-sac and irregularly shaped and the house is set at an angle to all the lot lines.
4. The variance request is comparable to at least one other variance in the vicinity.

5. The property backs to parkland; therefore, there will not be any impact on the neighbors.
6. The area is heavily wooded and the deck would not be visible.
7. The property contains exceptional topographical conditions.

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

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

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

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

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

1. This variance is approved for the location of the screened porch addition shown on the plat prepared by B.W. Smith and Associates, Inc., dated September 18, 2001, revised November 8, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Page 175, January 22, 2002, (Tape 1), KENNETH D. & LYNN M. SCHWARZ, VC 01-H-191, continued from Page 174

Mr. Ribble seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 175, January 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL H. BOLTON, VC 01-D-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 1934 Storm Dr. on approx. 15,525 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((16)) 265.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Daniel Bolton, 1935 Storm Drive, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to construct a detached garage to be located in the front yard of a lot containing less than 36,000 square feet.

Mr. Bolton presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had requested the garage to be situated in a way to ensure the preservation of several large oak trees that had existed on the property for many years. He requested a waiver of the 8-day waiting period.

Mr. Hart asked the applicant if the existing driveway would be extended or if an additional one would be constructed to give access to the side street. Mr. Bolton replied that a driveway to the side street would be constructed.

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

Mr. Ribble moved to approve VC 01-D-184 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL H. BOLTON, VC 01-D-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 1934 Storm Dr. on approx. 15,525 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((16)) 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 22, 2002; 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 the granting of a variance.
3. The property has double front yard requirements.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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) as shown on the plat prepared by George M. O'Quinn, dated October 25, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved

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

Mr. Kelley seconded the motion, which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROBERT H. & ELISE Q. CHRISCO, VC 01-D-177 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 ft. from side lot line and 3.0 ft. from rear lot line. Located at 2000 Virginia Ave. on approx. 37,868 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) 1, pt. 2 and 41-1 ((1)) 32A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Chrisco, 2000, Virginia Avenue, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a shed to be located 8.0 feet from a side lot line and 3.0 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 15 feet and a minimum rear yard of 13.5 feet; therefore, variances of 7.0 for the side yard and 10.5 feet for the rear yard were requested.

Mr. Chrisco presented the variance request as outlined in the statement of justification submitted with the application. He stated that the proposed location was the most level area on the lot to construct the shed. He explained that the property had several trees that he wanted to preserve and one corner of the lot contained an existing garage and was used as a footpath for the neighborhood children. He said that the path area also had high visibility to the street.

Mr. Hammack stated that the shed could be located in an area of open space inside the trees in the backyard. Mr. Chrisco explained that he could not build there because that area was on a very steep elevation. Mr. Hammack asked the applicant for a more intricate explanation as to why the shed could not be located in the area of the property where the garage and footpath were located. Mr. Chrisco explained that anything that could be constructed there had to be at a 60 degree slope due to the high elevation. He reiterated that the area was used as a footpath for the neighborhood children and that there was no screening from the street. Mr. Hammack asked if a variance would be needed to construct the shed in that area. Mr. Chrisco replied that a variance would not be needed.

Mr. Hammack stated that the requested shed was almost the size of a garage. Mr. Chrisco stated that he needed a shed that size for storage of lawn equipment and firewood. He explained that he currently used the crawlspace under his home for storage and as he was getting older in years it was difficult for him to utilize that space. He said that the proposed shed contained a loft for the storage of his firewood. Chairman DiGiulian called for speakers.

The following citizens came forward to speak in support of the application:

Sue Neal, 1972 Virginia Avenue; Steve Longerfeld, 2012 Virginia Avenue; Elena Morano, 1965 Virginia Avenue; Cliff Mesa, 1935 Franklin Avenue; Christy Holt, 2001 Franklin Avenue; Jonathan Weiner, 2011 Virginia Avenue;

The citizens provided the following statements of support:

The shed could be built without a variance in a different location, however, the proposed location was the least visible from the street; the neighborhood was in support of the applicants' desire to preserve trees on the property; the applicants' opened their yard for all of the neighborhood children to play and the proposed shed would be used to store outdoor toys; if the shed were moved to a different location on the property that had a higher elevation it would be more noticeable than the proposed location; the area on the side of the property where the garage and the footpath were located was so steep that the neighborhood children used that area for sledding during the winter months; there were many construction projects in the neighborhood much larger in size than what was proposed; the proposed shed would be in character with the neighborhood.

Norman Hammer, representative for Mr. and Mrs. Charles Sweeney, 1933 Franklin Avenue, came forward to speak in opposition. He stated that none of the required standards for the granting of a variance had been met and the shed could be constructed in several locations on the lot that would not require a variance. He said that the proposed location of the shed provided screening from the street but not from adjacent neighbors.

Charles Sweeney, 1933 Franklin Avenue, came forward to speak in opposition. He explained that the Board had recently approved a variance for an adjacent property to permit a dwelling to be approximately 24 inches off of his lot line. He stated that the proposed variance would decrease his property value and that the proposed shed height of 13.5 feet was too high for a storage shed. He explained that he had an existing privacy fence 7.0 feet in height and the proposed storage shed would exceed that fence by at least 6 feet depending on what elevation of the property on which it would be constructed. He requested that the Board deny the variance.

Ms. Gibb asked Mr. Sweeney if there would be more or less of an impact on his property if the shed were moved up to where a variance was not required. Mr. Sweeney replied that any other location was better than what was proposed.

Sean Keith, 1934 Franklin Avenue, came forward to speak in opposition. He stated that the proposed shed would be visible from the front of his home. He stated that the applicant could locate the shed on another location of the property that would not require a variance.

Mr. Chrisco, in his rebuttal, stated that the location of the shed on any other area would be more of a visual impact to the rear properties than what was requested.

Chairman DiGiulian closed the public hearing.

Ms. Gibb stated that the proposed variance did not provide consideration regarding visual impact for the neighbors located to the rear of the property and the application did not meet all of the required standards for the granting of a variance. She said that the height of the shed was too much of an impact on the adjacent neighbors to the rear of the property.

Ms. Gibb moved to deny VC 01-D-177 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT H. & ELISE Q. CHRISCO, VC 01-D-177 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 ft. from side lot line and 3.0 ft. from rear lot line. Located at 2000 Virginia Ave. on approx. 37,868 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) 1, pt. 2 and 41-1 ((1)) 32A. 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 January 22, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants did not meet required standards 6B or 7.
3. The applicants tried to be thoughtful about the placement of the shed so that there would be no visual impact from the street; however, there was no visual relief to the adjacent and rear neighbors.
4. The height of the shed was too much of an impact on the neighbors and a shed smaller in size would be preferable.

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 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 January 30, 2002.

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Page 179 January 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MARK & SUSAN SMITS, VC 01-M-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 3336 Mansfield Rd. on approx. 10,864 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((16)) 2.. 10,959 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 38-1 ((17)) 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. Mark and Susan Smits, 3336 Mansfield Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a mud room to be located 6.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 5.8 feet was requested.

Mr. and Mrs. Smits presented the variance request as outlined in the statement of justification submitted with the application. Mr. Smits explained that the proposed mud room was needed to safely transport their child

into the house and would provide additional storage space for child related items. He explained that the lot lines were skewed and the house was not centered on the lot; therefore, a variance was required. He requested a waiver of the 8-day waiting period.

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

Mr. Kelley moved to approve VC 01-M-178 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK & SUSAN SMITS, VC 01-M-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 3336 Mansfield Rd. on approx. 10,864 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((16)) 2. 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 22, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants' testimony and statement of justification indicated compliance with the required standards for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Harold A. Logan, dated, September 14, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. KENNETH I. AND PATRICIA A. BRITZ, VC 01-P-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in front yard of a corner lot. Located at 8436 Black Stallion Pl. on approx. 19,797 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((1)) 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. Kenneth Britz, 8436 Black Stallion Place, Vienna, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to allow an existing fence 6.0 feet in height to remain in the front yard of a corner lot. The Zoning Ordinance permits a maximum height of 4.0 feet for fences located in front yards; therefore, a variance of 2.0 feet was requested.

Mr. Britz presented the variance request as outlined in the statement of justification submitted with the application. He stated that his lot was subject to a double front yard requirement under the Ordinance. He explained that the fence was built according to a site plan which was approved at the time of the site development. He said that the fence had been in place for 5 years. He submitted pictures indicating that the fence was only visible from Rainbow Road and Woodford Road. He said that the property owner immediately opposite his property across Rainbow Road was subject to the same violation and was also requesting a variance. He stated that the fence did not negatively affect any adjacent properties.

Mr. Hart asked the applicant if he had received a Notice of Violation. Mr. Britz replied that he had.

Ms. Gibb asked if the violation was the result of a complaint. Ms. Stanfield replied that a complaint had been

filed.

Ms. Gibb asked the applicant if Rainbow Road was an easement. Mr. Britz explained that Rainbow Road was a private road and was not owned by the County. He said it was not paved and it could not be a legal right of way because it was less than 16 feet wide.

Chairman DiGiulian called for speakers.

Bahran Sherriery, 2000 Woodford Road, came forward to speak in support. He explained that his property was located opposite Rainbow Road from the subject property. He said that he had filed an application for a variance for the same problem. He stated that the fences provided the properties protection from the construction that was taking place farther down Rainbow Road. He reiterated that the fences did not negatively affect any adjacent properties.

Connie Douglas, Board of Directors of the Eshgrove Plantation, came forward to speak. She requested that, should the Board grant approval of the variance, the approval was strictly for a fence on Rainbow Road.

Chairman DiGiulian explained that the variance approval would only be for the fence that was indicated on the approved plat.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-P-186 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH I. AND PATRICIA A. BRITZ, VC 01-P-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in front yard of a corner lot. Located at 8436 Black Stallion Pl. on approx. 19,797 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((1)) 44. 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 22, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The property is impacted by double front yards.
4. The property backs up to an easement right-of-way in what is functionally the back yard.
5. The variance would be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest.
6. The variance will not have a substantial detriment 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;

Page 183, January 22, 2002, (Tape 1), KENNETH I. AND PATRICIA A. BRITZ; VC 01-P-186, continued from Page 182

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by George M. O'Quinn, dated October 23, 2001, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 183, January 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT G. & LESLIE A. RICHARDS, SP 01-M-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit porch to remain 24.4 ft. from front lot line. Located at 3422 Putnam St. on approx. 9,471 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((41)) 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. Stephen Fox, 10511 Judicial Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. The

applicants requested special permit approval for a reduction to minimum yard requirements based on error in building location to permit a porch to remain 24.4 feet from a front lot line. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, the total error was 5.6 feet.

Mr. Fox, agent for the applicants, presented the special permit request as outlined in the statement of justification submitted with the application. He explained that there was not enough room to site the home with the front portico structure; however, that was not noted on the site plan and upon discovery the portico had already been built. He said the portico was tied into the front portion of the home and to remove it would require substantial cutting into the home because the tresses were connected. He stated that the error was in good faith and there was no adverse affect on the neighbors.

Mr. Pammel asked if the standard plan to which the builder was operating included the portico on the plan and if the home was built according to the way the plans specified. Mr. Fox replied that was correct; however, there was no notation on the plans to exclude the construction of the portico.

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

Mr. Pammel moved to approve SP 01-M-064 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT G. & LESLIE A. RICHARDS, SP 01-M-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit porch to remain 24.4 ft. from front lot line. Located at 3422 Putnam St. on approx. 9,471 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((41)) 9. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 22, 2002; 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 roofed porch, as shown on the plat prepared by Jerry A. LaGarde, dated July 16, 2001, as revised through October 22, 2001, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 30, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 185, January 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. PEGGY C. & JOSEPH A., JR. MARSILII, SP 01-M-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit porch to remain 25.9 ft. from front lot line. Located at 3418 Putnum St. on approx. 9,066 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((41)) 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. Stephen Fox, 10511 Judicial Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. The applicants requested special permit approval for a reduction to minimum yard requirements based on error in building location to permit a porch to remain 25.9 feet from a front lot line. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, the total error was 4.1 feet.

Mr. Fox, agent for the applicants, presented the special permit request as outlined in the statement of justification submitted with the application. He explained that there was not enough room to site the home with the front portico structure; however, that was not noted on the site plan and upon discovery the portico had already been built. He said the portico was tied into the front portion of the home and to remove it would require substantial cutting into the home because the tresses were connected. He stated that the error was in good faith and there was no adverse affect on the neighbors.

Mr. Pammel asked if the standard plan to which the builder was operating included the portico on the plan and if the home was built according to the way the plans specified. Mr. Fox replied that was correct; however, there was no notation on the plans to exclude the construction of the portico.

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

Mr. Pammel moved to approve SP 01-M-063 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

PEGGY C. & JOSEPH A., JR. MARSILII, SP 01-M-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit porch to remain 25.9 ft. from front lot line. Located at 3418 Putnum St. on approx. 9,066 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((41)) 10. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 22, 2002; 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 roofed porch, as shown on the plat prepared by

Page 187, January 22, 2002, (Tape 1), PEGGY C. & JOSEPH A., JR. MARSILII, SP 01-M-063, continued from Page 186

Jerry A. LaGarde, dated July 16, 2001, as revised through October 22, 2001, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 30, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 187, January 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83- P-057-4 Appl. under Sect(s). 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a church to permit building additions, increase in seating, site modifications and change in development conditions. Located at 8526 Amanda Pl. on approx. 12.38 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Moved from 12/19/00, 1/30/01, 3/6/01, 10/2/01, 11/6/01 and 12/18/01)

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 C. Mereness, Cad Con Consulting, 10706 Vander Lane, Manassas, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the special permit amendment request as contained in the staff report. The Planning Commission held a public hearing on the referenced application on March 22, 2001, and issued an approval recommendation to the Board of Zoning Appeals. On April 3, 2001, the BZA held a public hearing on the referenced application. The BZA continued the public hearing to October 2, 2001, and requested that the church and neighbors enter into mediation to resolve issues concerning existing parking and the proposed changes to the church. The Northern Virginia Mediation Service facilitated mediation sessions between representatives of the Korean Central Presbyterian Church and the residents of Dunn Loring Woods and Stonewall Manor subdivisions. The hearing had been moved several times since October 2, 2001, so that mediation sessions could be completed. The site currently contained a 500 seat church, an education center and 328 parking spaces. At the April 3, 2001 public hearing the applicant presented a request for several changes which included; a new 1,000 seat sanctuary for a total of 1,500 seats on site; the old sanctuary would be retained for a chapel; an 18,425 square foot addition to the existing education building; and 172 additional parking spaces for a total of 500 parking spaces on the site. The church is located at Cedar Lane and Amanda Place, and Amanda Place bisects the church property. The application presented in April depicted both church buildings and parking areas located on both the north and the south sides of Amanda Place. Following mediation the applicant submitted a revised plat dated through October 25, 2001, with a cover sheet dated through November 21, 2001. The application was similar in that the request still included a new 1,000 seat sanctuary for a total of 1,500 seats on site, an 18,425 square foot addition to the education building and 500 parking spaces on site. However, the site had been redesigned with all of the buildings, including both the new and old sanctuaries and the education building located north of Amanda Place and the majority of the parking spaces and the stormwater management facility located on the south side of Amanda Place. On January 15, 2002, staff published an addendum to the original staff report, which outlined the changes to the application. The addendum included revised development conditions as stated in the addendum. Following publication of the addendum, staff received a letter from the Northern Virginia Mediation Service dated January 11, 2002. This letter outlined the agreement between the church and the neighbors and included proposed revisions to staff's development conditions. Staff had incorporated the changes and produced another revised set of development conditions dated January 22, 2002. Staff recommended approval of the application.

Mr. Hart asked for clarification that under the current conditions parking was not allowed on Amanda Place. Ms. Langdon replied that was correct. Mr. Hart asked what were the VDOT regulations regarding the proposed parking on the north side of Amanda Place. Ms. Langdon replied that parking was permitted on

the public street.

Mr. Mereness presented the special permit amendment request as outlined in the statement of justification submitted with the application. He referred to Won Sang Lee, Senior Pastor to answer any of the Board's questions regarding the mediation process.

Pastor Lee explained that the church had participated in more than twelve mediation meetings with the neighbors beginning in May of 2000, and ending in January 2002. He said that the neighbors indicated their support of the relocation of the church to the north side of Amanda Place. He stated that the church currently was debating between two different traffic consultant companies and would soon be making their decision on which they would retain. He said that the church had recently added another service and their traffic and parking situation was manageable.

Mr. Hart stated that he was aware of the church's purchase of approximately 50 acres on Lee Highway. He asked for clarification of whether or not the proposed expansion was an interim situation that might be rented to another church in the future. He pointed out that the development conditions mandated that the approval was for only the applicant to utilize the proposed property.

Mr. Lee explained that much time had passed since the first hearing and the beginning of the mediation process and during that time the congregation had forecasted ahead to the next 10 to 20 years and that was the reason for the purchase of the 50 acres of land. He stated that the church had thought about beginning a senior and junior high school in the future. Mr. Lee said that he would be retiring in 2003 and he did not know if the new minister had the same ideas for the future of the church.

The following people came forward to speak in support:

Paul Yoon, 4210 Raven Drive; Lynis Upson, 2601 Dennis Drive; Johnathon Nyugen, no address given for record, and stated the following;

The church successfully worked with the citizens in a mediation forum to address all of the concerns; the church and the citizens came together and constructed a revised set of development conditions that were agreeable to both parties; and the church had repaired water damage to the basement of an adjacent home.

The following citizens came forward to speak in opposition:

Harriet Epstein, 2602 Dennis Drive; Andy Furey, 2600 Dennis Drive; Ken Quincey, 8425 Bucknell Drive; Mike Kerrigan, 1309 Ross Drive; and Ann Lundbergh, 2434 McClintock Court.

The citizens provided the following testimony:

Many of the citizens were not in agreement with the relocation of the church to the north side of Amanda Place; the church's purchase of 50 acres of land on Lee Highway was not disclosed to the citizens during the mediation process; the drainage system for the current church's gravel parking lot, which was mandated under the current special permit conditions, was never installed and hydraulic water pressure outside of the adjacent homes damaged the foundations and basement; there was a housing development under construction at the end of Amanda Place and the new buyers were totally unaware of the projected location of the proposed church; the church's proposal did not provide for enough tree save areas on the property; there was concern that the size of the proposed development would add more traffic and noise pollution to the surrounding neighborhoods; there was concern about adequate security in the church parking lot because there had been several occurrences of teenage drinking and prostitution; the citizens questioned whether or not the Community Liaison Group would have the authority to resolve important issues relating to drainage and traffic; and, the size of the proposed church was too large for the area and would be detrimental to the surrounding neighborhoods.

Karen Hunt, 2431 Villanova Drive, Vice President of the Stonewall Manor Community Association, came forward to speak in opposition. She stated that the SMCA was opposed to the relocation of the proposed church north of Amanda Place. She explained that she was out of the Country during the mediation period and there was no other representation from the association available to attend in her absence. However,

had the association been aware of the relocation of the proposed church they would have made arrangements for someone to attend the mediation sessions and voice their strong opposition.

Ms. Gibb stated that the SMCA was out of place to voice their concern at the time of the hearing when nobody from their Association attended the mediation. Ms. Hunt reiterated that the Association would have had representation at the mediation if they had been aware of the proposed relocation of the church.

Linda Smith, Providence District Planning Commissioner, came forward to speak. Ms. Smith explained that the mood from the initial meetings with the church and the citizens was that more trees would have been lost if the sanctuary was constructed on the north side of the property so it was projected to be located on the south side with buffer options.

Mr. Pammel stated that he wanted concrete information as to whether or not the stormwater management facilities were sufficient. Ms. Langdon stated that the requirement for stormwater management was currently under review and the staff report indicated that the facilities could be sufficient based on the preliminary information contained on the plat. She said that at the time of site plan review the County would complete a thorough review of the stormwater management facilities.

Mr. Hammack asked what was the status of the earlier requirement that the Church construct drainage facilities to protect the adjacent homeowners. Ms. Langdon answered that the previous development conditions did not address that issue and staff was unaware of any private agreement that the church may have had.

There was conversation between the Board and Ms. Langdon regarding the revised proposed development conditions. They identified the conditions that the applicant and citizens submitted as a result of the mediation sessions and the conditions that were recommended by staff. In conclusion, it was the opinion of the Board that the proposed conditions were too detailed and beyond the scope of what was normally approved and that the proposed development would maximize the use of the property.

Mr. Mereness, in his rebuttal, reiterated that the Stonewall Manor Association had many opportunities to send a representative to the mediation sessions and they did not choose to attend. He stated that the proposed development was under the maximum FAR allowed by the County. He contended that the proximity of the proposed church was no closer to the Stonewall Manor development than the existing buildings. He explained that some of the existing homes were closer in proximity to the new development on Amanda Place than to the proposed sanctuary.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 83-P-057-4 with changes to the development conditions. He moved to delete most of the proposed development conditions that were created by the citizens and the applicant as a result of the mediation sessions.

Mr. Pammel seconded the motion.

Mr. Hart amended the motion to approve SPA 83-P-057-4 with changes to development conditions. He moved to include several conditions that Mr. Hammack had deleted.

Mr. Ribble seconded the motion, which failed for a lack of four votes by a vote of 2-5. Chairman DiGiulian, Ms. Gibb, Mr. Hammack, Mr. Kelley, and Mr. Pammel voted against the amended motion.

The original motion carried by a vote of 5-2. Mr. Hart and Mr. Ribble voted against the original motion.

**A RECONSIDERATION REQUEST WAS APPROVED ON JANUARY 29, 2002**

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Page 190, January 22, 2002, (Tape 1), Scheduled case of:

9:30 A.M. JO H. AND YUNG J. LEE, A 2001-BR-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants' storage of a food vending trailer on their residential property is not a permitted accessory use and therefore is in violation of Zoning Ordinance provisions. Located at 4321 Duncan Dr. on approx. 24,051 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-1 ((3)) 79 (Deferred from 10/9/01)

This appeal was administratively withdrawn, and the Notice of Violation was rescinded.

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Page 190, January 22, 2002, (Tape 1), Scheduled case of:

9:30 A.M. WILFREDO O. CIFUENTES, A 2001-LE-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is being used as a junk yard and that such activity has been established in violation of various Zoning Ordinance provisions. Located at 7716 / 7800 Cinder Bed Rd. on approx. 10.09 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 15, 15A and 16. (Def. from 11/6/01 for notices)(Def. From 1/8/02).

Chairman DiGiulian recused himself from the hearing.

Susan Epstein, Zoning Administration Division, explained that A 2001-LE-025 had been continued from January 8, 2002, to allow the appellant's attorney time to obtain an interpreter and review the appeal. Staff requested that the Board uphold the Notice of Violation.

Richard E. During, agent for the appellant, requested to be placed last on the agenda as the interpreter had not yet arrived to the hearing. The Board could not accommodate that request due to a strict schedule. Mr. During explained that the appellant had attempted to comply with the County regulations because the County had issued him, in error, a Non-Rup in July 1997, to operate a vehicle storage and impound lot. He said that because the permit was issued in error, the burden was on the County to revoke or rescind the permit as opposed to issuing a Notice of Violation to the appellant. He contended that the appellant had extended the use of his business to encompass several other entities and that the sign for the business had been in place for some time and was not recently installed as the staff report indicated. Mr. During stated that he had visited the property and admitted that there were Zoning Violations; however, the appellant was willing to work with staff to come up with several good faith proposals to bring the property into compliance.

Mr. Hart asked for clarification that there was no site plan approval or building permits and the only non-residential use permit was for Lot 16. Mr. During replied that was correct. Mr. Hart asked if the appellant disputed the County's representation of the location of the activity on the site with reference to the flood plain line. Mr. During stated that he had walked through the property and he said that the property did not reflect what the County illustrated.

William E. Shoup, Deputy Zoning Administrator, stated that an aerial photograph was taken in March 2000, and the County had the technology to superimpose the lot lines and flood plain lines on the photograph. He said the County was very confident that the picture was accurate.

Mr. Hart asked if the appellant considered all of the activity that was presently on Lot 16 was encompassed under the Non-Rup that was issued in 1997. Mr. During stated that was correct because there had been no extension of the use. Mr. Hart asked if any tenants were located on Lot 16. Mr. During replied that there were none.

Mr. Hammack recalled testimony that the additional entities on the property were employees of Mr. Cifuentes. He asked if there were documents such as W-2 forms to prove that the people were employees. Mr. During replied that the entities were sub-contractors whom the appellant paid in cash for providing direct support to the business. Mr. Hammack stated that they were not employees then.

Ms. Gibb asked how the appellant measured his property line in proximity to the other adjacent parcels.

Mr. During referred the question to Mr. Cifuentes and he explained that he had worked from a blueprint and

measured a distance of 150 feet beginning from a neighbor's fence, that he believed to be located on one property line, across the property.

Ms. Gibb asked if cars were being dismantled on his property. Mr. Cifuentes replied that in order to recycle cars, the gas tank, alternator, freon, and the battery needed to be removed from the cars and that was what was being done on parcel 16.

Mr. Hammack asked the appellant if the tires were taken off the cars. Mr. Cifuentes answered that the tires were taken off and a company removed them from the property on a weekly basis.

Mr. Hart asked staff if the removal of gas tanks, freon, and batteries would be something that could be done in a floodplain. Mr. Shoup answered that it was not currently permitted and it was unlikely that the Board of Supervisors or the Director of DPWES would approve those types of uses in a flood plain.

Mr. Hammack asked the appellant what other activity was taking place on Lot 16. Mr. Cifuentes explained that the cars were impounded and stored on the lot for 60 days and then they were recycled.

Mr. Hammack asked if the aerial photograph in the staff report represented the number of cars that were typically stored on Lot 16. Mr. Cifuentes replied that the amount of vehicles varied depending on how busy the business was.

Ms. Gibb asked staff for confirmation that the appellant did not meet the standards for operating his business because he did not have a valid site plan. Mr. Shoup replied that was correct. Mr. Shoup referred to a list of all of the other businesses that were operating on the property without permits or site plan approval. (The reference to "Lot" in this discussion referred to the lots designated on the list prepared by Mr. Cifuentes, not to the lots of record)

Mr. Hammack asked the appellant what businesses were operating on the property. Mr. Cifuentes stated that AA Automobile was operating on Lot 2 and that company removed all of the parts from the vehicles. He said that he had rented a portion of the land on Lot 1 for the storage of vehicles and those tenants had moved off of the property. He explained that the business on Lot 7 was the company that purchased the cars from him and they did autobody work on the cars and then sold them.

Mr. Hart asked if the appellant lived on the property. Mr. Cifuentes replied that he used to live on the property but he had moved.

Mr. Hammack stated that staff had approximated that there were 56 subcontractors that were currently located on the site. Mr. During replied that the number was much less since the appellant had started asking people to leave the premises.

Mr. Hammack asked whether or not the appellant agreed with staff's analysis that a significant portion of the property had been cleared and graded now contained poured concrete. Mr. During stated that there were only several areas of concrete on the property which shouldn't be considered a violation.

Vice Chairman Ribble asked if the appellant had any knowledge of cars being stored on the neighboring property owned by William Dowdy and Shirley Hunter. Mr. During answered that was correct and Mr. Cifuentes had measured the property lines incorrectly. He stated that the appellant had agreed to clear up the neighboring lot and bring it into compliance.

Mr. Shoup explained the extent of the damage to the Dowdy/Hunter property.

Vice Chairman Ribble called for speakers.

David Hudson, Associated Business and Tax Payers of the Hilltop Industrial Park, came forward to speak in opposition. He stated that although there were a certain portion of activities that may be permitted under the existing permits, the overwhelming issue was that a large portion of the flood plain was being polluted and used for illegal purposes. He said that the overflow of wrecked cars was being stored on public streets. He stated that he was concerned because there were no restrooms located on the property and there were many people working on the property. He said his company had been continually contacting the police

regarding that issue. He requested that the Board uphold the decision of the Zoning Administrator.

Theodore Backarainus came forward to speak. He stated that he was in talks with the appellant to purchase the property and he assured the Board that upon his purchase he would urge the appellant to work with County staff to bring the property into compliance.

H. Kendrick Sanders, representative for William Dowdy and Shirley Hunter, came forward to speak. He stated for the record that the appellant had taken responsibility for all of the violations on the Dowdy/Hunter property and that the appellant had accepted the task of cleaning up the land.

Ms. Epstein stated that even though a Non-Rup had been issued in 1997, it was issued in error because there had been no site plan approval and there was no special exception for operating in the floodplain. She said the actual use on the property was deemed to be a junk yard because there was dismantling of vehicles and vehicles were sold to another tenant on the property. She stated that the appellant's business had not operated continuously on the property.

Mr. During, in his rebuttal, reiterated that the County had issued the permit in error therefore; a Notice of Violation should not have been issued to the appellant. He said that the tenants of the property were subcontractors providing direct support to the appellant's business. He suggested that the junk cars that were being stored on the public streets were from another business in the area and not the appellant's. Mr. During reiterated that the appellant had mistakenly encroached on the Dowdy/Hunter property and was taking full responsibility for the clean up of that lot.

Vice Chairman Ribble closed the public hearing.

Mr. Hart stated that the evidence was overwhelming that there was a junk yard use and it was physically located on a floodplain. He said that there were many things unrebutted about the absence of a site plan, building permits and sanitation facilities.

Mr. Hart moved to uphold the determination of the Zoning Administrator with regard to A 2001-LE-025.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian recused himself from the hearing.

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Page 192 January 22, 2002, (Tape 1), Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance provisions. Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on approx. 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and 11/27/01)

Chairman DiGiulian recused himself from the hearing.

Dolores Kinney, Zoning Administration Division, presented staff's opinion as included in the staff report. The appeal was of a determination that the appellant was maintaining a junk yard on the referenced property, which was in violation of the Zoning Ordinance. There was fill in a floodplain and a use that was established without the appropriate approvals. In June 2001, an inspection of the property revealed that there were junk cars, vehicle parts, debris, lumber and other types of debris that was being stored on approximately 86,000 square feet of land that had been cleared of trees and concrete had been poured on the property. Since June, the appellant had attempted to clear the property of all of the junk cars, however, there was still debris remaining on the property and the concrete still existed. Ms. Kinney stated that the representative for the appellant indicated that the appellant did not cause the violation and therefore should not be persecuted in this particular situation and since the junk cars had been cleared they felt the violation should no longer exist. The Zoning Ordinance indicates that the Zoning Administrator had the authority to cite the property owner for



Page 193, January 22, 2002, (Tape 1), T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 192

the violations because they were ultimately responsible for what happened on their property. Because there was still a lot of debris, lumber, scrap metals and other types of items on the property which constituted a junkyard; therefore, the property was still in violation.

Mr. Hart asked staff if the photographs in the staff report accurately represented the amount of debris on the property in question. Ms. Kinney replied that the photographs of the Hunter property were taken in December 2001, and the items still existed on the property.

H. Kendrick Sanders, agent for the appellants, informed the Board that several junk cars and a shed that were in the staff photographs had been removed from the property. He explained that the area was previously filled with junk cars that had been put there by Mr. Cifuentes and they were removed at the appellants' insistence. He stated that the appellants felt they should not have been cited with a Zoning Violation since they did not put the junk cars and other debris on the property. Mr. Sanders explained that the only access to the Hunter property was through the property owned by Mr. Cifuentes and because of this the appellants had no knowledge of what was taking place on their property. He stated that the appellants were not operating any business or use on the property and took issue with staff's opinion that the small amount of debris on the property constituted a junkyard use. Mr. Sanders suggested that the staff's statement in the staff report that trees had been cleared on an area adjacent to lots 15, 15A and 16 was incorrect. He stated that only one small area of lot 15 was cleared of trees.

Mr. Hammack asked what the level of cooperation was between the appellants and Mr. Cifuentes regarding the clean up of the property. Mr. Sanders replied that the appellants were in the process of working with Mr. Cifuentes to remove the debris that was left on the property and if that should fail they were willing to do whatever was necessary to clean up the property.

Ms. Gibb asked what the appellants' planned to do about the concrete on the property. Mr. Sanders contended that it was not a violation to pour concrete outside of the floodplain and requested that it be allowed to remain on the property.

Ms. Gibb suggested deferring the appeal to give the appellants time to work with Mr. Cifuentes to clean up the remaining debris from the property. Mr. Sanders replied that a deferral was acceptable to the appellants.

William E. Shoup, Deputy Zoning Administrator, explained that it was staff's opinion that the violation should not be dropped but was looking to get the property cleaned up. He requested that the Board uphold the Zoning Administrator to place staff in the position to take appropriate action whether it was litigation against the appellants or prosecution of Mr. Cifuentes as he had admitted that he was the one who trespassed on the property.

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

Mr. Hammack stated that it was clear that the appellants did not carry out any of the Zoning Violations on the property; however, they were ultimately responsible because they owned the property. He suggested that the Board defer decision to give the appellants time to work with Mr. Cifuentes to clean up the remaining debris from the property.

Mr. Hammack moved to defer decision regarding A 2001-LE-023 to April 30, 2002, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian recused himself from the meeting.

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Page 193, January 22, 2002, (Tape 1), After Agenda Item:

Approval of January 15, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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Mr. Hart stated that the Board had requested that the Planning Commission consider several things that were encompassed under the Residential Development criteria and he asked if any members were interested in attending a sub-committee meeting on that issue. He said that Mr. Pammel had offered to attend this meeting with him. The Board decided that Mr. Hart and Mr. Pammel would attend that meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 2:03 p.m.

Minutes by: Lori M. Mallam

Approved on: August 13, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 29, 2002. The following Board Members were present: Chairman John DiGiulian, John Ribble, Nancy Gibb, Paul Hammack, James Hart, Robert Kelley, and James Pammel.

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

Page 195, January 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JAMES E. AND LYNN D. ANDERHOLM, VC 01-V-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17 ft. from front lot line and 15 ft. from rear lot line. Located at 8802 Northern Spruce La. on approx. 10,502 sq. ft. of land zoned R-3 (Cluster) and HC. Mt. Vernon District. Tax Map 110-1 ((1)) (25) 23. FB

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James and Lynn Anderholm, 8802 Northern Spruce Lane, Alexandria, Virginia, replied that it was.

Fran Burnszynski, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. He stated that the applicants sought approval of a variance to permit the construction of an addition to the existing dwelling to be used for additional living space and a garage. He stated that the addition would be 17 feet from the front property line and 15 feet from the rear property line. He said the minimum yard requirement was 20 feet and 25 feet respectively; therefore, a variance of 3 feet in the front yard and 10 feet in the rear yard were requested.

Mr. Anderholm presented the request as outlined in the statement of justification submitted with the application. He stated that they had lived in their current home for 18 years. He said seven years ago his wife had developed Parkinson's Disease and due to her progressive disease, they would like to construct a first floor bedroom and make their home wheelchair accessible for her. He said the new configuration required a variance for a new entryway.

Ms. Anderholm stated that the lot had an unusual shape. She said because of the way the house was situated on the property, they could not extend their home very much in either direction. Ms. Anderholm said she had the support of her neighbors.

Chairman DiGiulian called for speakers in support or opposition to the application.

Kim Beasley, Architect/Agent, came forward to speak in support of the application. He stated that the shape of the lot prohibited expansion in many ways and the proposed addition had been designed to minimize the encroachment on the setbacks.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve VC 01-V-181 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES E. AND LYNN D. ANDERHOLM, VC 01-V-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17 ft. from front lot line and 15 ft. from rear lot line. Located at 8802 Northern Spruce La. on approx. 10,502 sq. ft. of land zoned R-3 (Cluster) and HC. Mt. Vernon District. Tax Map 110-1 ((1)) (25) 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

Page 196, January 29, 2002, (Tape 1), JAMES E. AND LYNN D. ANDERHOLM, VC 01-V-181, continued from Page 195

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 29, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot has an exceptional configuration and shape.
4. The variance requests are minimal.
5. There would not be any detriment to the adjacent property.
6. There would be no change in 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, shown on the plat prepared by the Beasley Architectural Group, dated November 3, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Section 18-405 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 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 February 6, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JEFFREY M. JOHNSON, VC 01-D-197 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.0 ft. and 33.0 ft. from front lot lines of a corner lot. Located at 6625 Melrose Dr. on approx. 16,337 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((24)) 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. Jeffrey M. Johnson, 6625 Melrose Drive, McLean, Virginia, replied that it was.

Charles Burnham, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. He stated that the applicant sought approval of a variance to permit construction of an addition 26 feet and 33 feet from the front lot line of a corner lot. He said the proposed addition would be located 26 feet from the western front lot line and 33 feet from the northern front lot line. He said the minimum front yard requirement was 35 feet; therefore, a variance of 9 feet on the west and 2 feet on the north were requested.

Mr. Johnson presented the request as outlined in the statement of justification submitted with the application. He stated that his hardship was that the corner lot was shallow and had two 35 foot setback requirements. He said that he considered placing the addition to the rear of the house but he had neighbors living directly behind him and he felt that would be an encroachment on them. Mr. Johnson stated that the proposed addition would give his growing family a first floor family room with an eat-in kitchen.

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

Mr. Pammel moved to approve VC 01-D-197 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JEFFREY M. JOHNSON, VC 01-D-197 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.0 ft. and 33.0 ft. from front lot lines of a corner lot. Located at 6625 Melrose Dr. on approx. 16,337 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((24)) 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 29, 2002; 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 request is reasonable given that it is a corner lot, and the strict application of the ordinance would produce undue hardship to the applicant.
4. The lot is exceptional in size and shallowness.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by L. Carl Gardner, Jr., dated October 31, 2001, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0-1. Mr. Ribble abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 199, January 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. FREDERICK C. CRAIG, JR., VC 01-V-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling within 200 ft. of railroad tracks and wall greater than 7.0 ft. in rear yard. Located at 10718 Old Colchester Rd. on approx. 6.69 ac. of land zoned R-1. Mt. Vernon District. Tax Map 113-3 ((1)) 27A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sharon Scarce, Agent, 6375 Union Mill Road, Clifton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval of a variance to permit construction of a single family detached dwelling to be located within 131.2 feet of railroad tracks. She said the Zoning Ordinance required residential structures be located at least 200 feet from railroad tracks; therefore, a variance of 68.8 feet was requested for the dwelling. Ms. Stanfield stated that the existing dwelling had been proposed for removal as part of the rebuilding process for the new structure.

Ms. Stanfield stated that the applicants also sought permission to construct a wall to act as a sound barrier between the dwelling and the railroad tracks. She said the wall would be a maximum of 12 feet high and the Zoning Ordinance required fences to be no more than 7 feet in the rear yard; therefore, a variance of 5 feet was requested for the wall.

Mr. Hart stated that he noted from the staff report that the cellar and chimney from the old house were to be preserved for historic reasons. He said there was nothing in the development conditions about the preservation and asked why it had not been addressed. Ms. Stanfield replied that she had consulted with the County Archeologist and the Historic Preservation Planner in the County, and no one felt that there was a need to include a development condition. She said Mr. Craig had been very cooperative in working with the County.

Ms. Scarce presented the request as outlined in the statement of justification submitted with the application. She stated that Mr. Craig proposed to backfill the cellar in order to support the existing chimney. She said the Historical Society had investigated the site and found that it did not possess the significance they had hoped to find.

Ms. Scarce stated that the property had an irregular shape. She said Mr. Craig proposed to place the house on the original footprint to minimize the construction and preserve the historical value to his property. She said that the house was going to be disassembled, packaged, and removed by the Association of the Preservation of Virginia Antiquities for storage.

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

Mr. Hart moved to approve VC 01-V-176, but stated that he would like to modify Development Condition 1 by adding a sentence to read: "Notwithstanding anything depicted on the plat, the existing house will be disassembled and removed, and the cellar backfilled. The existing chimney will be supported and may remain."

The Board had a brief discussion regarding the proposed development condition for the existing cellar and chimney. Ms. Scarce stated that she was unsure if the Society had planned to take the chimney down also, or if it had planned to leave it intact.

Mr. Hart made a motion to defer decision until there was further verification of what parts of the house would be disassembled.

Chairman DiGiulian stated that the motion failed for lack of a second vote.

Mr. Hammack asked what was the age of the house. Fred Craig, Jr. came forward to speak in support of his application. He stated that the house originally dated back to 1750, but had burnt down, and was rebuilt in 1850. He said the Society was interested in preserving the wood, beams and walls from the 1850 structure. He said they had anticipated taking down the highest part of the chimney and would leave only the fireplace.

Mr. Kelley moved to approve VC 01-V-176 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

FREDERICK C. CRAIG, Jr., VC 01-V-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling within 200 ft. of railroad tracks and wall greater than 7.0 ft. in rear yard. Located at 10718 Old Colchester Rd. on approx. 6.69 ac. of land zoned R-1. Mt. Vernon District. Tax Map 113-3 ((1)) 27A. 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 29, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot has an exceptional shape.
4. The lot is impacted by noise from the railroad and Route 1 traffic.
5. There is no opposition to the application.

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

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



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

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

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

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

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

- 1. This variance is approved for the location of a dwelling and barrier wall shown on the plat prepared by George M. O' Quinn, dated February 1, 2000, as revised through December 21, 2001, submitted with this application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. In order to reduce interior noise to a level of approximately DNL 45 dBA, the applicant shall utilize the following acoustical treatment measures in the construction of the dwelling:
  - Exterior walls shall have a laboratory sound transmission class (STC) rating of no less than 45.
  - Doors and windows shall have a laboratory sound transmission class (STC) rating of no less than 37 unless glazing constitute more than 20% of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, the windows shall have an STC rating of no less than 45.
  - All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.
- 4. The proposed noise wall in the rear yard shall be located as depicted on the plat, shall be no more than twelve (12) feet in height and shall be constructed of materials which will provide a solid and continuous barrier, without gaps or cracks.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ALDERSGATE UNITED METHODIST CHURCH, SPA 86-V-063-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 86-V-063 previously approved for a church and related facilities and a child care center to permit building addition, addition of land area and rectory. Located at 1301 Collingwood Rd. on approx. 7.10 ac. of land zoned R-3. Mt.

Vernon District. Tax Map 102-4 ((1)) 18 and 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Cole, Agent, 1301 Collingwood Road, Alexandria, Virginia, replied that it was.

Mr. Ribble made the disclosure that he attended the church, but felt he would be able to make an objective decision.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval of a special permit amendment to allow for 25,022 square feet of building area and site modifications for the redesign of the parking areas. She said this would result in allowing for an additional 76 parking spaces and included the addition of a storm water management/best management practices facility. She said the application also included the addition of Parcel 25, which would add 1.69 acres of land area and the addition of a 3,650 square feet rectory, which was proposed for lot 25.

Ms. Stanfield stated that staff concluded the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and recommend approval of SPA 86-V-063-2. She said the recommendation was made subject to the approval of the proposed development conditions dated January 22, 2002.

Mr. Cole presented the request as outlined in the statement of justification submitted with the application. He stated that the church agreed with the development conditions with two exceptions.

Mr. Cole addressed Development Condition 7, transitional screening for lot 25, which was the parsonage. He stated that due to the residential character of the neighborhood, they believed such screening would be inconsistent with the development of that community. He asked to modify the requirements so that the screening along the northern property line would be deleted.

Mr. Cole addressed Development Condition 12, the dedication of a right-of-way along Fort Hunt and Collingwood Road. He said the church was willing to dedicate 45 feet of the front yard as they had previously in the original special permit application, but had a problem with the proposed sidewalk requirement. He said the church supported the need for a sidewalk along Collingwood Road; however, they felt that they had not been given any guidance for it. He proposed that the sidewalk be located closer to the road. Mr. Cole said the County had plans to make improvements along Collingwood Road in the near future and requested that they be relieved of the requirement to put in a sidewalk at the present time.

Mr. Cole suggested they have an agreement that after improvements had been made by the County, the church would put in a sidewalk. He said if that was not acceptable to the Board, he requested more specific guidance to put an asphalt sidewalk south of Collingwood Road. He distributed photos to the Board indicating where they would like to place their sidewalk.

Ms. Gibb asked staff if the Board did not address the sidewalk issue, would it be reviewed at the time of site plan review and Ms. Stanfield replied that was correct.

Chairman DiGiulian called for speakers in support or opposition to the application.

John Sellers, 1502 Coolspring Drive, came forward to speak in opposition to the application. He stated that he felt it would destroy an important tract of wooded land that was directly behind his property. He said that the trees and vegetation were proposed to be cleared and paved over for parking spaces. He addressed the declining effect this would have on property values and expressed the need for keeping the woods as a natural environment.

Mr. Hart asked for clarification from staff of what would be preserved according to the plat. Ms. Stanfield replied that the area directly abutting lot 11 would have some tree preservation, but there were development conditions proposed to supplement that.

Mr. Hammack asked why the standard lights were proposed to be raised from the standard 12 feet to 18 feet. Ms. Stanfield replied that the applicant had made that request.

Mr. Cole stated in his rebuttal that the church would accept the development conditions in the screening for that area. He stated that the original waiver was established back in 1987 and was made in response to neighbors who did not want screening at that time. He said the berm was developed within the same timeframe.

Mr. Cole addressed the light standards. He stated the church had tried to develop a system that utilized a minimum number of pole lights and enough candle footlights to provide security and safety in the parking lot.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 86-V-063-2 with the following modifications. He said the transitional screening along the northern lot line, which had been proposed in Development Condition 7, be deleted.

Mr. Ribble stated that the last sentence in Development Condition 12 regarding the sidewalk would also be deleted.

The motion was seconded by Mr. Kelley.

Mr. Hammack stated that there had been a lot of complaints about lighting in residential neighborhoods and he did not believe 18 foot lights could be adequately screened. He moved to amend Development Condition 13 to limit lighting to the standard 12 feet.

Mr. Ribble agreed with Mr. Hammack and included that in his motion.

Ms. Gibb seconded the motion for the lights.

Mr. Ribble moved to approve the amended motion for SPA 86-V-063-2 for reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALDERSGATE UNITED METHODIST CHURCH, SPA 86-V-063-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 86-V-063 previously approved for a church and related facilities and a child care center to permit building addition, addition of land area and rectory. Located at 1301 Collingwood Rd. on approx. 7.10 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((1)) 18 and 25. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on date January 29, 2002; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1301 Collingwood 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 George M. O'Quinn, dated February 23, 2001, as revised through October 23, 2001, 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 Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan, submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Para. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the principal place of worship shall be 500.
6. All parking shall be on site, in the areas as depicted on the Special Permit Amendment Plat.
7. Transitional screening shall be provided as follows:
  - Transitional Screening 1 shall be provided along the western and southern lot lines. Existing trees on site shall be saved, if possible, or replaced. Size, species and number of all plantings shall be determined in consultation with the Urban Forestry Division.
8. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
9. The barrier requirement shall be waived or modified as depicted on the Special Permit Amendment Plat.
10. The maximum total daily enrollment for the child care center shall not exceed 150 children.
11. Hours of operation for the child care center shall be limited to 8:00 a.m. to 2:30 p.m., Monday through Friday.
12. Dedication of right-of-way along Fort Hunt Road and Collingwood Road shall be conveyed to the Board of Supervisors, in fee simple to on demand or at the time of site plan approval, whichever occurs first.
13. Any proposed lighting of the parking lot areas shall be in accordance with the following:
  - The combined height of the light standard and fixtures shall not exceed a maximum of twelve (12) feet.
  - The lights shall be low intensity design, full-cut-off fixtures, which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the site.
14. Stormwater management/Best Management Practices facilities shall be provided as depicted on the Special Permit Amendment Plat or as determined by DPWES, provided, however, that such facilities shall not be located in any required transitional screening yard.
15. The existing two-story dwelling located on the church property may only be used as a residence for the church pastor or church staff/caretaker and family.

Page 205 January 29, 2002, (Tape 1), ALDERSGATE UNITED METHODIST CHURCH, SPA 86-V-063-2, continued from Page 204

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

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

Mr. Kelley seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 205 January 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT V. & BARBARA K. MOORE, TRUSTEES, VC 01-L-190 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from rear lot line and 5.9 ft. from side lot line. Located at 6371 Alderman Dr. on approx. 6,190 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-3 ((11)) (3) 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. William Reames, Agent, Patio Enclosures, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to construct an addition 7.3 feet from the rear lot line and 5.9 feet from the side lot line. She said the Zoning Ordinance required a minimum rear yard of 25 feet and a minimum side yard of 8 feet; therefore, variances of 17.7 feet for the rear yard and 2.1 feet for the side yard were requested.

Mr. Reames presented the request as outlined in the statement of justification submitted with the application. He stated that due to the size, shape, and location of the house on the lot, a variance would be needed for any type of addition. He said the existing deck was 10 feet by 25 feet, and the applicant had agreed to reduce the deck to 18 feet so that the rear lot requirement would be less than 5 feet as it already existed. He said he found no other place to add to the dwelling. Mr. Reames stated that he proposed to enclose a portion of the deck. He said the Homeowners Association (HOA) supported the application.

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

Ms. Gibb moved to approve VC 01-L-190 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT V. & BARBARA K. MOORE, TRUSTEES, VC 01-L-190 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from rear lot line and 5.9 ft. from side lot line. Located at 6371 Alderman Dr. on approx. 6,190 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-3 ((11)) (3) 1.  
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

Page ~~206~~ January 29, 2002, (Tape 1), ROBERT V. & BARBARA K. MOORE, TRUSTEES, VC 01-L-190, continued from Page ~~205~~

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 29, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The house is sited at an angle on the lot.
4. The lot is pie-shaped.
5. This is the only location that can be expanded upon.
6. The addition has been modified to minimize the impact and encroachment of the rear yard set back requirements.
7. The lot is surrounded by open area and screened so the impact on neighbors is minimal.
8. The side yard variance request is minimal.

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

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

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

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

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

1. This variance is approved for the location of an addition, shown on the plat prepared by George M. O' Quinn, dated September 13, 2001, submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Pammel voted against the motion. Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DENNIS R. & PATRICIA A. SHAW, VC 01-B-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.6 ft. from side lot line such that side yards total 18.4 ft. and 17.5 ft. from front lot line. Located at 10117 Dundalk St. on approx. 9,932 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-4 ((9)) 1469.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis Shaw, 10117 Dundalk Street, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought permission for a variance to construct a two-car garage addition to be located 4.6 feet from the side lot line, and 17.5 feet from the front lot line. He said the Ordinance required a minimum side yard of 8 feet, and a total side yard of 20 feet; therefore, a variance of 3.4 feet for the side yard and 1.4 feet for the total side yard were requested.

Mr. Shaw presented the request as outlined in the statement of justification submitted with the application. He stated that he and his wife would like to enlarge the single carport into a two-car garage. He said there had been vandalism in the neighborhood in the past, and they felt this would help secure their cars. He said this would also allow them to keep their car out of the elements of the weather and to gain some storage space.

Mr. Pammel stated that the requested garage was for 25 feet, which lead to the minimal setback. He asked if Mr. Shaw would be willing to reduce the width of the garage to 20 feet. Mr. Shaw referred to his architect, Javier A. Arencibia, 13368 Point Rider Lane, Herndon, Virginia.

Mr. Arencibia stated that the garage was designed to give space for the ease of accessing the cars without hitting each other, to allow for a workbench and some storage space. He said he could reduce the width to 22 feet, but 20 feet would reduce the use of the garage for its intended purpose.

Mr. Pammel stated that his concern was for the reduction of the side yard, but said he could support 22 feet. Mr. Arencibia replied that the applicant agreed to that.

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

Mr. Kelley moved to approve VC 01-B-182 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DENNIS R. & PATRICIA A. SHAW, VC 01-B-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.6 ft. from side lot line such that side yards total 18.4 ft. and 17.5 ft. from front lot line. **(THE BZA APPROVED THE GARAGE TO BE A MAXIMUM SIZE OF 20 FT. BY 22 FT.)** Located at 10117 Dundalk St. on approx. 9,932 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-4 ((9)) 1469. 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 29, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant's statement of justification and testimony indicate 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 garage addition as shown on the plat (as qualified by the BZA as outlined in Development Condition Number 4) prepared by Javier Arencibia, dated, November 2, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding what is shown on the plat, the garage shall be a maximum of 20 ft. by 22 ft. in size.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 6, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 209, January 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DONALD R. & NANCY T. CRANE, VC 01-L-189 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 15.3 ft. from front lot line. Located at 5996 Marilyn Dr. on approx. 11,093 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((39)) 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. Donald and Nancy Crane, 5996 Marilyn Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought a variance to permit construction of a deck to be located 15.3 feet from the front lot line of a through-lot between Marilyn Drive in the front and Tilbury Road in the rear of the dwelling. He said the Zoning Ordinance required a minimum front yard of 30 feet; therefore, a variance of 14.7 feet was requested.

Mr. Crane presented the request as outlined in the statement of justification submitted with the application. He said they would like to build an ordinary wooden deck similar to other decks already on the majority of the homes in their subdivision. He stated that a variance was required because of Tilbury Road in the rear of the property. He said that Tilbury Road was actually a dirt and gravel alley and was not used for vehicular traffic.

Mr. Crane stated that the deck would not be visible because of the topography, and stated that their property was very secluded. He said that the shape of the lot was unique because their lot was at the end of a cul-de-sac, and for that reason, their house had to be set farther back on the property, closer to Tilbury Road. He stated they had a petition signed by their neighbors in support of the application.

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

Mr. Hammack moved to approve VC 01-L-189 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD R. & NANCY T. CRANE, VC 01-L-189 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 15.3 ft. from front lot line. Located at 5996 Marilyn Dr. on approx. 11,093 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((39)) 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 January 29, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The property has double front yards as a result of Tilbury Lane.
4. The lot is exceptionally shallow.
5. The character of the zoning district would not be changed.

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

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

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

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

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

1. This variance is approved for the location of a deck as shown on the plat prepared by R. C. Fields, Jr., dated, September 18, 2001, as submitted with this application and is not transferable to other

land.

2. Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb 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 6, 2002. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel requested that the Board take a short recess before proceeding to the last two cases.

The Board recessed at 10:30 a.m. and reconvened at 10:40 a.m.

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Page 211, January 29, 2002, (Tape 2 and 3), Scheduled case of:

- 9:00 A.M.      DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-M-009 previously approved for a place of worship to permit a private school of general education which has an enrollment of 100 or more students daily. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with VC 01-M-008). (moved from 4/3/01 and 5/22/01) (Deferred from 7/17/01 and 10/30/01).
- 9:00 A.M.      NORTH AMERICAN ISLAMIC TRUST, INC., VC 01-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 2.0 ft. from front lot line of a corner lot. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with SPA 84-M-009-2). (moved from 4/3/01 and 5/22/01) (Deferred from 7/17/01 and 10/30/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, Reed, Smith, Hazel and Thomas, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Mr. Hart disclosed that he had several other cases with attorneys from Mr. Hanes' firm, but did not believe it would affect his ability to participate in hearing this case.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought approval of an amendment to a special permit to allow a private school of education to be located within the existing classrooms on the 2<sup>nd</sup> floor of the mosque's structure. He said that the proposed maximum daily enrollment would be 150 students. He said the proposed hours of operation for the school would be 8:00 a.m. to 3:00 p.m. Monday through Thursday, and 7:00 a.m. to 11:15 a.m. on Fridays.

Mr. Bernal stated that the school proposed to utilize the existing 1,600 square foot outdoor play area, a 1,800 square foot indoor gym/recreation room, and a 2,000 square foot courtyard located adjacent to the worship area. He said there were not any structural layout changes to be made to the property or to the mosque structure itself.

Mr. Bernal stated that the applicant also sought approval of a variance to permit parking spaces to remain

2.0 feet from the front lot line of a corner lot along Leesburg Pike. He said the Ordinance required 10 feet; therefore, a variance of 8 feet was requested.

Mr. Bernal stated that staff did not believe that the application met all the general standards for the special permit amendment as contained in the Zoning Ordinance, specifically noting Standards 1, 2, 3, 4 and 7. He said that according to parking tabulations on the special permit plat, the seating capacity was 900 with a required parking ratio of one space per four worshippers. He said that equaled 225 spaces, and did not include the additional 19 spaces required for the proposed school. He said the total number of spaces required on-site would be 244 and only 152 spaces were provided on-site. Mr. Bernal stated that 152 parking spaces had not been enough for the current use and to add another use would certainly exacerbate the existing parking problem.

Mr. Bernal stated that in 1993 the Board of Supervisors (BOS) approved a shared parking agreement between the mosque and two other churches located across Route 7. He said the shared parking agreements had a time limit of four years and had expired. He stated that the agreement had been based on a seating capacity of 360 persons, with 90 spaces for the mosque. Mr. Bernal said that the required parking was to be provided on-site, and the other churches provided overflow parking. He said that was not currently true and the seating capacity was at 900 worshippers and only 152 spaces on-site.

Mr. Bernal said a request for a shared parking agreement had been submitted to the Department of Public Works and Environmental Services (DPWES) which was scheduled to go before the BOS for decision. He stated that DPWES sent out a letter in January which stated that the parking agreements between the two churches had not satisfied the requirement for permanent parking availability in which to meet the mosque's required parking needs. Mr. Bernal stated that DPWES had determined that the actual parking needs of the mosque probably exceeded the available parking supply at the three sites combined.

Mr. Bernal stated that staff believed that adding a school of 150 students to an already intense site on 3.31 acres would only continue to adversely impact the surrounding community. He said that on July 11, 2001, the Planning Commission (PC) administratively heard the special permit amendment application and unanimously recommended that the BZA deny the application for the reasons previously stated.

Mr. Bernal stated that staff did not believe the subject application was in harmony with the Comprehensive Plan, nor in conformance with the standards of the Zoning Ordinance, and therefore, recommended denial of the special permit amendment.

Mr. Pammel asked how many of the 152 spaces had been utilized during the Monday through Thursday, normal daytime hours. Mr. Bernal replied that, he did know for sure, but citizens had told him the parking lot was used during other times of the week.

Mr. Pammel stated that even if it was not known how many of the parking spaces were being utilized Monday through Thursday, he thought that parking during the week would have a significant impact on the application since the mosque had requested a joint use of parking facilities. Mr. Bernal replied that the mosque already did not meet the required minimum parking for the 900 people.

Mr. Hart asked for clarification of Development Condition 7, that addressed the fact that parents would not be allowed to pick up or drop off their children by car, and that all students had to arrive at school by bus. Mr. Bernal replied that was the intent of the development condition.

Susan Langdon, Chief, Special Permit and Variance Branch, replied that technically the churches across Route 7 were not sharing their parking, and the mosque had only 152 parking spaces on-site, which did not meet the minimum required by the Zoning Ordinance.

Grayson Hanes, Agent, stated that he represented the applicant along with Jane Kelsey and Lori Greenlief. He said that the application case would be decided on its merits from a land use standpoint. He said it was not going to be decided on the basis of any race, religion, or other type of preference. Mr. Hanes gave a synopsis of the history of the special permit amendment since 1984.

Mr. Hanes presented the request as outlined in the statement of justification submitted with the application. He stated that the existing mosque could accommodate the school, where the space was already available

Page 213, January 29, 2002, (Tape 2 and 3), DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2 and NORTH AMERICAN ISLAMIC TRUST, INC., VC 01-M-008, continued from Page 212

but not used. He said that the school was currently located in Springfield, and the mosque had been paying \$9,000 - \$10,000 a month for the other space.

Mr. Hanes addressed transportation issues, and stated that according to a traffic study, there had not been any transportation issues related to this application.

Mr. Hanes addressed parking and the shared parking agreements. He said only one day a week the mosque held two services where up to 900 worshippers would be present. He stated that he agreed 152 parking spaces had been unable to accommodate that number of worshippers. Mr. Hanes stated that during the week only 40 spaces had regularly been used on-site daily. He said the mosque had two licenses in recordable form and notarized, that provided ample parking spaces to serve the church on Friday and every other day. He said the Church of Christ allowed them to use 120 spaces and the First Christian Church allowed them to use 70 spaces. He said that the combination had given the mosque more than 100 allowable spaces.

Mr. Hanes addressed the issue of 150 additional school children that would come by bus to the school. He said the children would be out of the mosque at least one hour before services started, in order to satisfy the on-site parking situation along with the shared parking.

Mr. Hanes stated that the mosque agreed with most of the development conditions that the staff had imposed. He stated that they had added four new development conditions that dealt with the school and would not cause the problems the staff had raised.

Mr. Hanes briefly addressed Ramadam, stating that there had been more traffic in the evening, but still the mosque accommodated everyone on-site.

Mr. Pammel said he had read the transportation report. He said it contained information that stated all of the 152 parking spaces and shared parking spaces during the services had been utilized. He said he was concerned that a lot more vehicles were parking elsewhere since the designated sites had been full. He said that confirmed what had been said in the past, that even with the shared parking agreements, there were not enough parking spaces.

Mr. Hanes stated that according to the parking ratios, the mosque had come up with 100 more parking spaces than needed. Mr. Pammel said he thought the Zoning Ordinance requirements were deficient and the fact was that the overflow parking was invading the whole community.

Mr. Pammel asked Mr. Hanes about the second parcel of land and whether it was contiguous.

Mr. Hammack stated that the shared parking agreement with the Church of Christ allowed termination with 7 days notice and also temporary suspension if the Church of Christ needed to utilize the spaces for their own purposes. He stated that the second church, the First Christian Church, allowed termination on a 30 day notice for a term of one year. He asked Mr. Hanes what would happen if either of these churches terminated their agreement.

Mr. Hanes stated that the BOS had approved those conditions in the past and had no problem finding them permanent. He said many churches in the County used such shared parking arrangements, and if the BOS took a different stance, it would affect a lot of churches.

Ms. Gibb asked Mr. Hanes to clarify the difference in the number of worshippers that existed in 1993 compared to current attendance, as it appeared that the circumstances were unchanged over the years. Mr. Hanes read from the Minutes of October 5, 1993 hearing, which stated that, at that time, the mosque had anticipated a membership increase from 360 to 900 worshippers.

Mr. Hanes stated that he had not addressed the variance request. He said that because of the dedication and the widening of Route 7, a variance had been requested due to the front lot line. He said it was an extraordinary situation and he believed that the staff did not have a problem with it.

Chairman DiGiulian called for speakers in support of the application.

The following people came forward to speak in support of the application:

Mohammed Hamaseed, 4205 Rio Drive, Waleed Bushard, Munson Hill Road; Abdul Hassim, (no address given), Estrab Hassim (no address given), Hassim Adulah, (no address given), Hassen Gol, (no address given), Hamid Gulah Deen, (6166 Leesburg Pike ), Adam Knor (no address given), Faduma Said (no address given), Hwalet Hadia, 4707 Bristol Drive, Desia Garbia, (no address given) Algocal Dipadi (no address given), Hwahid Baratti, 2925 Stillwood Circle, Fredum Moneshimi , 5597 Seminary Road, Mohammed Layaded , 4707 Bristol Drive, and Omar Lee, 2900 John Marshall Drive.

The speakers supported the application for various reasons, including that they wanted a private school for their children; the belief that the mosque had given much to the community; it allowed for daytime prayer; money was being spent to rent space for a school instead of utilizing the money for education; their children would greatly benefit from an Islamic education; a better value system would be instilled by the church; and parking in the area was not an issue.

Chairman DiGiulian called for speakers in opposition to the application.

The following people came forward to speak in opposition of the application:

Virginia Maher, President of the Lee Boulevard Heights Civic Association, 6104 Wooten Drive, Falls Church; Jay Brinkley (no address given); Susan Flenner (no address given); Randall Pence, 3104 Wooten Circle, Falls Church; Kathy Duran (no address given); Silvia Johnson (no address given); Robin Pence, 3104 Wooten Circle, Falls Church; Charles Flinner, 6102 Brook Drive, Falls Church; Rita Andrews, 6701 Munson Hill Road, Falls Church; Debbi Beterra, 3209 Amtock Circle, Falls Church; Michael Casserole, 3209 Amtock Circle, Falls Church; Charlotte Medum, Lt. Col. Abraham Hanson (no address given); and Jacqueline Gilbert, (no address given).

Margo Erkmar (no address given), Susan Fisher, no address given, Margaret Dorherty, no address given, David Rowe and Brenda Rowe (no address given) all submitted letters to the Board for the record in opposition to the application.

Their opposition was based on the following issues: traffic congestion; negative impact on the neighborhood; uncontrollable traffic on Fridays; illegal parking in RPP zones, driveways, lawns, building entrances, private lots; local businesses lost customers due to the traffic volume; people walked in the streets; the inability of fire trucks or ambulances to pass through caused a major safety factor; and, there had been incidences reported of throwing stones.

Mr. Hanes stated in his rebuttal that the opposition had little to do with actual issues. He stated that this church had a lot of background and people needed to vent, and acknowledged that there were still problems that needed to be dealt with.

Mr. Hanes stated that there had been no opposition to the variance request and asked that the Board put that through. He said there had been a lot of opposition to the special permit amendment and traffic problems. He stated that according to the transportation report submitted, there was not a transportation problem in that area.

Mr. Pammel stated that he was going to ask staff to do additional analysis. He said that recent counts showed indications of 2,100 to 2,400 worshippers, and that far exceeded the special permit allowed for the mosque. Mr. Hanes stated that the count was probably closer to 1,200 people. He said that was still 400 people more than the special permit allowed.

Mr. Hart asked staff if there were any other violations for which the mosque had been cited. Carolyn Blevins, Senior Zoning Inspector, stated that a number of issues had been addressed in July 2001, but currently the only outstanding issue was the shared parking agreement.

Mr. Kelley asked if Ms. Blevins had been asked to look at the on-site vending. She replied that she had addressed that and taken pictures; however, the Zoning Administrator had ruled that was part of normal church functions such as a bake sale.

Page 215, January 29, 2002, (Tape 2 and 3), DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2 and NORTH AMERICAN ISLAMIC TRUST, INC., VC 01-M-008, continued from Page 214

Mr. Hammack asked if Ms. Blevins had been instructed to look into the off-site parking situation. She replied stated that she had not looked into that at all.

Mr. Hammack stated that a photograph had been presented to the Board that had been taken on July 6, 2001, a Friday afternoon. He said the parking lot at the mosque was full, the church lot across Route 7 was full and the streets were full of parked cars. He said the Board had received many complaints from the citizens regarding the parking situation and the Board had real concerns about that.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to defer decision for SPA 84-M-009-2 to July 2, 2002, at 9:00 a.m. He said that would allow Mr. Hanes time to continue with the Board of Supervisors on issues relative to the parking and shared parking agreements as well as the adjacent contiguous site on Row Street. He also requested that the staff perform their own independent parking analysis performed over a minimum of four different occasions in order to get a reasonable average. The previous analysis was done over a one-week period and would not constitute a viable average.

Mr. Kelley requested that the staff be present at the site on at least four different Fridays, and count the number of worshippers entering the mosque at the two services in order to get a specific number for the first and second service. Mr. Kelley stated that the staff would provide a figure that neither Mr. Hanes nor the community would be able to object to.

He said the Board had taken public testimony so the hearing would be for decision only, with input from the staff on the requested analysis. He said Mr. Hanes would provide the results of his analysis and any decisions by the Board of Supervisors. He stated that would be the extent of the public testimony, and no other speakers would be allowed.

Mr. Hammack seconded the motion. He also asked the staff to do traffic counts in the morning and afternoon, as well as Fridays. He said he would like to get a count starting with the morning prayers. He said the current parking study provided by the applicant started at noon, and there was nothing to show whether there would be conflicting traffic at 7:30 a.m. – 8:00 a.m. in the morning. Mr. Hammack stated that would be his amendment.

The motion carried by a 7-0 vote.

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Mr. Pammel moved to approve VC 01-M-008 for the reasons noted in the Resolution.

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## REVISED

### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NORTH AMERICAN ISLAMIC TRUST, INC., VC 01-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 2.0 ft. from front lot line of a corner lot. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with SPA 84-M-009-2). (moved from 4/3/01 and 5/22/01) (Deferred from 7/17/01 and 10/30/01). 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 29, 2002; and

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

1. The applicants are the owners of the land.
2. The variance is necessitated because of the right-of-way that was acquired by the State for the widening of Route 7.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 parking lot as shown on the plat prepared by Hamid Mogavemi-Tehrani, dated August 30, 2000, as revised through May 25, 2001, and approved with this application, as qualified by these development conditions.

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

Mr. 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 February 6, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 217, January 29, 2002, (Tape 3), After Agenda Item:

Approval of August 21, 2001 Minutes

Mr. Pammel moved to approve the August 21, 2001 Minutes. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

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Page 217, January 29, 2002, (Tape 3), After Agenda Item:

Request for Intent to Defer  
Andrews Chapel United Methodist Church, SPA 83-D-045-2

Mr. Kelley moved to accept staff's recommendation for deferral until April 2, 2002. Mr. Ribble seconded the motion, which carried with a 7-0 vote.

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Page 217, January 29, 2002, (Tape 3), After Agenda Item:

Request for Reconsideration  
Korean Central Presbyterian Church, SPA 83-P-057-4

Chairman DiGiulian stated that he had a letter from the Stonewall Community Association that requested a reconsideration. He stated that he also had a letter from the Dunn Loring Woods Civic Association.

Mr. Kelley stated that he felt the Board should grant the reconsideration for this application based on the fact that the Dunn Loring Woods Civic Association had not objected nor testified to the application because of the Arbitration Agreement that had been submitted. He said they acted under the assumption that the Board would only accept the Arbitration Agreement, which was not true.

Mr. Kelley moved to grant the reconsideration and Ms. Gibb seconded the motion which carried by a 7-0 vote.

Ms. Gibb stated that the Dunn Loring Woods Civic Association stated several times that the Board had directed them into mediation, which she could not recall doing.

Mr. Ribble stated that he recalled that there was a suggestion by one of the Board members that they try mediation. He said one of the letters stated that the Board directed them into mediation, which was not true.

Mr. Hammack stated that he had made the motion and had made changes to the development conditions, but he did not believe that the Board had directed the applicant into mediation. He said he did not believe that the Board gave them the impression that they would adopt all of the proposed development conditions.

Susan Langdon, Chief, Special Permit and Variance Branch, asked the Board if April 9, 2002, was an acceptable date for the reconsideration. The Board agreed that the date was acceptable.

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Page 217, January 29, 2002, (Tape 3), After Agenda Item:

Approval of January 22, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hart seconded the motion with the exception of the reconsidered application, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 1:05 p.m.

Minutes by: Judith A. Gobbi

Approved on: September 17, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 5, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

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

Page 219, February 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SALAMEH BROTHERS CONSTRUCTION CO., VC 01-V-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 55.32 ft. Located at 9111 Ox Rd. on approx. 2.73 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 29.

Chairman DiGiulian noted that the application had been administratively moved to March 5, 2002.

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Page 219, February 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & JEANNIE CALDWELL, VC 01-L-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.1 ft. from rear lot line. Located at 5300 Trumpington Ct. on approx. 9,252 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (44) 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. Jeannie Caldwell, 5300 Trumpington 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 construction of an addition to be located 3.1 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 21.9 feet was requested for the proposed sunroom addition.

Ms. Caldwell presented the variance request as outlined in the statement of justification submitted with the application. She said the addition would cause no visual impact on adjacent properties. Ms. Caldwell stated that there was open space on both sides of her lot.

Mr. Pammel asked why the addition could not be placed on the left side of the house, which would have less encroachment into the rear yard. Ms. Caldwell replied that she would need a variance on that side also. She said if the addition was placed on the left side of the house, it would cause visual impact on adjacent property owners.

Mr. Pammel stated that this was a significant encroachment and asked if the applicant would be receptive to a reduction from 12 feet to 10 feet, to make the minimum depth 5 feet from the rear property line. Ms. Caldwell replied that she did not have any problems with that adjustment; however she said she did not understand why it would be an issue to have the addition in the location requested because there was open space behind her property.

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

Mr. Pammel said he was not disposed to a variance of this magnitude. He said a 5-foot yard would be the minimum that he would be agreeable to under the circumstances. He said he understood the applicant's position that it was not viewed by any other property owner and that there was permanent open space to the rear, but he said the Board had experienced difficulties before even with those types of circumstances.

Mr. Pammel moved to approve VC 01-L-185 in part. Mr. Hart seconded the motion.

Chairman DiGiulian stated that the proposed setback of 3.1 feet was only at one point and the rear property line had a severe angle. He said he did not have a problem with the application as requested.

The motion failed by a vote of 3-3. Chairman DiGiulian, Mr. Ribble, and Mr. Kelley voted against the motion.

Mr. Kelley said he agreed with Chairman DiGiulian that there was not much of an encroachment and it was only at one particular point. Mr. Kelley moved to approve VC 01-L-185 for the reasons noted in the Resolution.

Mr. Hart said this was a close case but he could support the motion. Mr. Hart said the house did not fit within the setback lines to begin with and that was an unusual condition. He said the addition would probably be too close and he would be happier if the addition was more to the left, but there is open space to the rear of the property.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM & JEANNIE CALDWELL, VC 01-L-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.1 ft. from rear lot line. Located at 5300 Trumpington Ct. on approx. 9,252 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (44) 37. 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 5, 2002; and

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

1. The applicants are the owners of the land.
2. There is not much of an encroachment and the encroachment is only at one particular point.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by Karie L. Colburn, dated, November 27, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-1-1. Mr. Pammel voted against the motion, and Mr. Hammack abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 221, February 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      CENTREVILLE PRESBYTERIAN CHURCH, SP 01-Y-065 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church. Located at 5690 Sully Rd. on approx. 6.06 ac. of land zoned R-1, WS, HC and SC. Sully District. Public Right-of-Way formerly known as Tax Map 54-4 ((1)) 3A.

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, Agent, 5675 Stone Road, Centreville, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the existing church to remain until such time as the property was needed for the Route 28/I-66 interchange. Staff concluded that the application was in harmony with the Comprehensive Plan and recommended approval subject to the development condition contained in the staff report.

Mr. Robson, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the same application was approved by the BZA previously; however, a Non-RUP was never issued and the time lapsed on the original special permit.

Mr. Hart asked Mr. Robson if the applicant was in agreement with the development conditions. Mr. Robson replied yes.

Mr. Hart asked Ms. Stanfield if a reference to the basement needed to be included in the development conditions. Ms. Stanfield replied no.

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

Mr. Hart moved to approve SP 01-Y-065 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CENTREVILLE PRESBYTERIAN CHURCH, SP 01-Y-065 Appl. under Sect(s). 3-103 of the Zoning Ordinance to a permit church. Located at 5690 Sully Rd. on approx. 6.06 ac. of land zoned R-1, WS, HC and SC. Sully District. (Public Right-of-Way formerly known as Tax Map 54-4 ((1)) 3A.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 5, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a special permit.
3. The application is essentially the same as the prior approval.
4. Staff recommends approval and the request 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 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 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 M. Robson, dated March 7, 1994, as revised through April 30, 2001, 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 to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The subject property (public right-of-way formerly know as Tax Map 54-((1)) 3A) shall be vacated on demand by the Board of Supervisors when needed for right-of-way.

- 6. The maximum number of seats in the main area of worship shall be 240. Parking shall be provided within the parking areas shown on the special permit plat. All parking shall be on-site.
- 7. The barrier requirement shall be modified along the southern lot line to allow the existing sound wall to satisfy the requirements.
- 8. Interior and peripheral parking lot landscaping requirements shall be modified as shown on the plat approved with this application.

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, six (6) months after the date of approval\* unless the use has been established with the approval of a Non-Residential Use Permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 223, February 5, 2002, (Tape 1), After Agenda Item:

Approval of September 11, 2001,  
September 18, 2001 (evening session), and October 23, 2001 Minutes

Mr. Pammel moved to approve the Minutes with corrections noted by Mr. Hart. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 223, February 5, 2002, (Tape 1), After Agenda Item:

Approval of January 29, 2002 Resolutions

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

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Page 223, February 5, 2002, (Tape 1), After Agenda Item:

Approval of BZA Public Hearing dates  
for the latter six months of 2002

Mr. Ribble moved to defer approval of the public hearing dates to February 12, 2002, and add August 20, 2002, as a hearing date if needed. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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The Board recessed at 9:20 a.m. and reconvened at 9:30 a.m.

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9:30 A.M. BX AUTO CENTER, LLC, A 2001-MA-036, A 2001-MA-037, A 2001-MA-038, A 2001-MA-039, A 2001-MA-040 Appls. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing tenants to operate Vehicle Light and/or Major Service Establishments without Special Exception approval and without valid Non-Residential Use Permits, as well as junk yards/storage yards, all in violation of Zoning Ordinance provisions. Located at 5723-C, 5723-D, 5723-E and 5723-F Center La. on approx. 44,544 sq. ft. of land zoned C-8, SC, HC and CRD. Mason District. Tax Map 61-2 ((20)) 10.

William Shoup, Deputy Zoning Administrator, stated that there was a request for deferral.

Mark Busman, the owner's attorney, came forward stating that he had received a letter from Blankingship & Keith, withdrawing from representation of the appellants. Mr. Busman stated that he did not specialize in zoning cases and that the owner had discussions with Grayson Hanes and two other zoning attorneys in order to retain an alternate attorney. Mr. Busman said the appellant was in no position to proceed. He asked the Board to defer the appeals to April 16, 2002.

Mr. Hart gave a disclosure that would not affect his ability to participate in the public hearing.

Mr. Shoup stated that staff supported the deferral request.

Mr. Hammack said the request was justified and he moved to defer appeals A 2001-MA-036, A 2001-MA-037, A 2001-MA-038, A 2001-MA-039, and A 2001-MA-040 to April 16, 2002, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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9:30 A.M. ALFRED W. REILLY, A 2000-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing a tenant to operate a Vehicle Light and Major Service Establishment in the C-8 District without Special Exception approval and to occupy the property without a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 5711A Center La. on approx. 8,776 sq. ft. of land zoned C-8, HC, SC and CRD. Mason District. Tax Map 61-2 ((20)) 9. (Def. From 2/13/01 and 2/27/01) (Def. From 5/1/01 and 5/29/01) (Def. From 9/25/01)

Maggie Stehman, Zoning Administration Division, stated that the appeal issue had been resolved. She said there was a new tenant which was a contractor's office and shop, a permitted use in the C-8 District and the Non-RUP had been issued following an inspection by the Zoning Enforcement Branch. Ms. Stehman said staff recommended dismissal of the appeal.

Alister Reilly, architect and son of Alfred Reilly, stated that they had owned the property for 25 years. He said they had run into a wall of bureaucracy with the County based on the existing sewage and road conditions. Mr. Reilly said that even though they had cleared the issue with a tenant, they were still interested in trying to get the previous use back on the property.

Mr. Hammack moved to dismiss A 2000-MA-034. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 9:39 a.m.

Minutes by: Regina Thorn Corbett

Approved on: June 4, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 12, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

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

Page 225 February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE ANDREW CHAPEL UNITED METHODIST CHURCH, SPA 83-D-045-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-045 previously approved for a church with a child care center and nursery school to permit site modifications. Located at 1301 Trap Rd. on approx. 7.01 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 47. (In Association with SE 01-D-023 and 2232-D01-17). (Def. From 12/4/01)

Chairman DiGiulian stated that an intent to defer to April 2, 2002, was approved on January 29, 2002.

Mr. Pammel moved to defer SPA 83-D-045-2 to April 2, 2002, at 9:00 a.m. Ms. Gibb and Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

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Page 225 February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE HAINES, VC 01-B-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.6 ft. from side lot line. Located at 8808 Cromwell Dr. on approx. 13,125 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((5)) 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. George Haines, 8808 Cromwell Drive, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an expansion of an existing garage and a second story addition to be located 4.6 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 7.4 feet was requested.

Mr. Haines presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot lines were skewed and the house was situated at an angle on the property. He said that there was a large tree in the rear yard that would provide adequate screening.

Mr. Hammack asked if there was an existing garage. Mr. Haines replied that there was. Mr. Hammack asked the applicant if he was willing to make the garage smaller across the front. Mr. Haines replied that he was agreeable to that; however, he had to consult with his architect.

Mr. Hammack suggested that the applicant consult with his architect and return before the Board with smaller dimensions for the garage. Ms. Gibb requested that the applicant provide the Board with a drawing of the proposed second story addition.

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

Mr. Hammack moved to defer decision for VC 01-B-192 until February 26, 2002, at 9:00 a.m. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 226, February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JAMES J. & MARY D. BRIODY, VC 01-P-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in front yards of a corner lot and to permit variance of sight distance requirements. Located at 10007 Oakton Crossing Ct. on approx. 17,266 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 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. Lynne Strobel, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit a 6.0 foot high fence to remain in the front yard of a corner lot. The Zoning Ordinance requires a maximum fence height of 4.0 feet for fences located in the front yard; therefore, a variance of 2.0 feet was requested. The applicants also sought a variance from the site distance provision of the Zoning Ordinance which required that no structure obstruct the site distance in a triangle formed from points 30 feet from the property line.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She explained that the developer installed the fence prior to the applicants' purchase of the home and that the property was restricted by a double front yard requirement. She said the fence was installed to provide a visual and physical barrier to Blake Lane and Hibbard Street, both of which were busy roadways. She informed the Board that as Blake Lane was a major thoroughfare, a portion of the fence was permitted to be up to 8.0 feet in height and only the portion at the intersection of Blake Lane and Hibbard Street required the variance. She said that a higher fence in that location was necessary to provide privacy and security.

Ms. Strobel explained that the site distance at the intersection of Blake Lane and Hibbard Street with the existing fence was approximately 485 feet, which exceeded the County standard of 475 feet and the Virginia Department of Transportation standard of 425 feet. She suggested that a reduction in fence height to 3.5 feet would not improve the sight distance. She submitted photographs of the intersection and its proximity to the existing fence and contended that there were no sight distance issues. She submitted a petition of support signed by the surrounding neighbors. Ms. Strobel reiterated that the property was acquired in good faith with the existing fence already in place and requested that the Board approve the application. She referred to Alan Bacon, Charles P. Johnson Associates, to provide more information regarding sight distance.

Mr. Bacon submitted two graphics to the Board to clarify what sight distance was required and what was available at the subject property. He stated that the fence did not impede the required intersection sight distance and lowering the fence or relocating it would not improve the sight distance requirement.

Mr. Hart noted that the fence partially obstructed a sidewalk easement. Mr. Bacon explained that the easement was created many years prior when the intersection was widened.

Mr. Hart asked staff if the Board had approved any similar sight distance variances. Susan Langdon, Chief, Special Permit and Variance Branch, replied that this was the first variance for a waiver of sight distance that the Board had heard.

Mr. Pammel stated that it was his belief that the Virginia Department of Transportation (VDOT) did not support any sight distance waivers because the locality was liable to lose maintenance funds. He noted that the applicants had also filed an appeal of a Notice of Violation and asked John Bell, Zoning Administration, for his input regarding to his previous statement about VDOT and sight distance requirements. Mr. Bell explained that the Zoning Ordinance standard was separate from the VDOT standards and it was applied to the land area and not to the road or the road improvements.

Ms. Strobel stated that the application did meet the VDOT standards; however, they did not meet the Zoning Ordinance standards. She submitted additional photographs, to attempt to illustrate that there were no sight distance problems.

Mr. Pammel stated that he used the intersection frequently and he felt that there were sight distance issues.

Page 227, February 12, 2002, (Tape 1), JAMES J. & MARY D. BRIODY, VC 01-P-193, continued from Page 226

There was discussion between the Board and Mr. Bacon with regard to the sidewalk easement. The Board suggested that the easement should be vacated.

Mr. Hammack asked why the developer constructed the fence in an area where it would be in violation of the Ordinance. Ms. Strobel replied that the error was done in good faith. She stated that the developer had constructed the fence to provide privacy and protection from the busy thoroughfare.

Chairman DiGiulian called for speakers.

Mary Briody, 10007 Oakton Crossing Court, came forward to speak. She stated that the fence was existing upon their purchase of the home. She said that the entire neighborhood was in support of the application and that the fence was needed to provide privacy when their children were playing in the yard. She contended that the fence did not obstruct sight distance.

Jim Briody, 1007 Oakton Crossing Court, came forward to speak. He explained that the homeowners association was also in favor of the application. He said that he understood that there were traffic problems at the intersection, but did not feel that the fence obstructed sight distance.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the fence obstructed sight distance and moved to deny VC 01-P-193. Mr. Hammack seconded the motion for the purpose of discussion.

Mr. Hammack suggested that the applicants try to reach a compromise by moving the fence back.

Mr. Hart agreed with Mr. Hammack's suggestion and made a substitute motion to defer decision regarding VC 01-P-193 to March 5, 2002, at 9:00 a.m. to allow the applicants to come back to the Board with a proposal to relocate the fence farther back on the property. Mr. Pammel seconded the substitute motion, which carried by a vote of 7-0.

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Page 227, February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. AN T. DAO, VC 01-P-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in a front yard of a corner lot. Located at 10009 Oakton Crossing Ct. on approx. 17,215 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 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. Lynne Strobel, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit a 6.0 foot high fence to remain in a front yard of a corner lot. The Zoning Ordinance permits a maximum fence height of 4.0 feet in a front yard; therefore, a variance of 2.0 feet was requested.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that the applicants purchased the home with an existing fence that had been constructed by the developer in 1999. She explained that the fence provided a visual and physical barrier to Hibbard Street, which was a heavily traveled roadway. She said that the property was restricted by a double front yard requirement. She informed the Board that the fence ended before the intersection of Hibbard Street and Oakton Crossing Court and there were no site distance issues.

Mr. Hart asked if the applicant wanted to defer the application until a decision had been made regarding the adjacent property as the fences were connected. Ms. Strobel replied that the applicants' did not wish to do so.

Page 228 February 12, 2002, (Tape 1), AN T. DAO, VC 01-P-194, continued from Page 227

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

Mr. Hart moved to approve VC 01-P-194. The motion failed for the lack of a second.

Mr. Hammack suggested that the Board defer the application until a decision had been made on the adjacent property because any changes to that property could affect this application.

Mr. Hammack moved to defer decision regarding VC 01-P-194 to March 5, 2002, at 9:00 a.m. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

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Page 228, February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ALI A. AALAI & NAHID AZADFROUZ, VC 01-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 52.0 ft. in height. Located at 612 Rivercrest Dr. on approx. 1.19 ac. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 19R. (Moved from 10/2/01) (admin moved from ind. def. per appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a dwelling 52 feet in height. The Zoning Ordinance requires a maximum height of 35 feet; therefore, a variance of 17 feet was requested.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She explained that upon the applicants' purchase of the property, they consulted Fairfax County and were told that the lot was buildable but were not told that there had been a previous variance on the property that was denied. She stated that the previous variance proposed a home that was more than 95 feet high. She submitted photographs of the property that illustrated the severe topography of the lot. Ms. Kelsey explained that there was a severe grade difference of 40% from the front of the proposed home down to the rear edge. She stated that the proposed area for the construction of the home was the only level area on the lot and that there was no way to construct a home on the lot without a height variance. She explained that the home would be situated in a way that only approximately half of the front door would be visible from the street. She submitted photographs, which reflected that the proposed home would be in character with the surrounding properties. She noted that the rear portion of the property was in a floodplain area and it backed to the Potomac River, so there would be no adverse impacts to the rear. She informed the Board that the applicants obtained an approved grading plan from the County and the septic field had been tested and approved.

Ms. Kelsey referred to Lori Greenlief, Jane Kelsey and Associates. Ms. Greenlief explained that the use of retaining walls was required due to the extreme topography of the property. She submitted photographs of homes in the neighborhood that were also constructed with retaining walls.

Ms. Kelsey informed the Board that the applicants had met with several neighbors and with the Northern Virginia Park Authority and they had no objections to the application. She requested, upon the behalf of the Potomac Conservancy, an additional condition that required preservation of the trees behind the septic field. She stated that the application met the standards for the granting of a variance and requested that the Board approve the variance.

There was conversation between the Board and Ahmed Martin, Engineer, regarding the computation used to determine of the height total height of the structure and how many levels the proposed home would contain.

Ms. Gibb stated that there were several letters that objected to the bulk of the home and she asked if there was any screening to the rear of the home. Mr. Martin replied that the back of the home faced the Potomac River and that a large majority of the trees on the lot were being preserved.

Page 229 February 12, 2002, (Tape 1), ALI A. AALAI & NAHID AZADFROUZ, VC 01-D-125, continued from Page 228

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

Ms. Kelsey requested a development condition that provided flexibility to set the home back several feet if it was needed.

Ms. Gibb moved to approve VC 01-D-125 with the addition of the applicants' proposed development conditions and for the reasons stated in the Resolution.

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**REVISED**

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

ALI A. AALAI & NAHID AZADFROUZ, VC 01-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 52.0 ft. in height. Located at 612 Rivercrest Dr. on approx. 1.19 ac. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 19R. (Moved from 10/2/01) (admin moved from ind. def. per appl. req.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 12, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants provided testimony indicating compliance with the required standards for the granting of a variance.
3. The property has exceptional narrowness and extreme topographic conditions.
4. The lot has been deemed buildable.
5. The applicants have done the best they can with the conditions of the lot.
6. The front of the proposed home doesn't seem any taller than other homes in the neighborhood.
7. The most affected view was to the rear of the property and the property backs to the river and a conservation easement owned by the Regional Park Authority and they had no objection to 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 strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 a dwelling with a maximum height of 52.0 feet as shown on the plat prepared by Hamid Matin, dated June 23, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The applicant shall not remove any trees which are located between the septic field and the Potomac River except those that are dead and dying.
4. The location of the dwelling may be shifted a maximum of 10 feet to the rear if necessary for engineering reasons.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 230 February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. REBERTO ESQUIVEL, VC 01-S-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from rear lot line. Located at 4417 Midstone La. on approx. 8,400 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((3)) (41) 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. Steve McVicker, 201 Marion Circle, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The

applicant requested a variance to permit the construction of a sunroom addition to be located 14 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 11.3 feet was requested.

Mr. McVicker presented the variance request as outlined in the statement of justification submitted with the application. He submitted a drawing of the proposed sunroom addition and explained that it would be located off the existing kitchen. He said that the variance was required because of the extreme shallowness of the rear yard.

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

Mr. Ribble moved to approve VC 01-S-196 for the reason stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

REBERTO ESQUIVEL, VC 01-S-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from rear lot line. Located at 4417 Midstone La. on approx. 8,400 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((3)) (41) 17. 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 12, 2002; 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 the granting of a variance.
3. The rear of the property was exceptionally shallow.

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

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Brian W. Smith dated, November 5, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 232 February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL SAKYI, SP 01-S-066 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.1 ft. from side lot line. Located at 8103 Langbrook Rd. on approx. 10,719 sq. ft. of land zoned PRC. Springfield District. Tax Map 79-4 ((7)) 26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Daniel Sakyi, 8103 Langbrook Road, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit a shed to remain 2.1 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet; therefore, a modification of 5.9 feet was requested.

Mr. Sakyi presented the special permit application as outlined in the statement of justification submitted with the application. He said that he was not aware that a permit was needed to construct a shed. He said that he had informed his neighbors before he had built the shed and they had no problems. He explained that he had five children and needed the shed to store their bikes and various other outdoor toys. He said that there



was no other location on his property level enough to locate the shed.

Mr. Pammel asked if the shed could be moved or if it was a permanent structure. Mr. Sakyi replied that it was on skids but it would be very difficult to move.

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

Ms. Gibb asked staff if there had been a complaint or violation. Mr. Bernal stated that he was unaware of any Notice of Violation for the property.

Mr. Kelley moved to approve SP 01-S-066 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL SAKYI, SP 01-S-066 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.1 ft. from side lot line. Located at 8103 Langbrook Rd. on approx. 10,719 sq. ft. of land zoned PRC. Springfield District. Tax Map 79-4 ((7)) 26. 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 12, 2002; 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 storage shed as shown on the plat prepared by Larry N. Scartz, Land Surveyor, dated September 6, 2001, as submitted with this application and is not transferable to other land.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 234, February 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., SPA 82-V-052- 3 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-052 previously approved for a monastery to permit a mausoleum. Located at 2501, 2503 and 2505 Stonehedge Dr. on approx. 6.45 ac. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((1)) 4 and 93-3 ((8)) (3) 1, 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. Lynne Strobel, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicants requested a special permit amendment to permit a mausoleum to be located in the basement level with an existing garden room that was located at the southeastern corner of the existing building. The existing garden room encompassed an area of approximately 350 square feet and would serve as the final resting place for up to 30 members of the Poor Clares community. The applicants did not propose any new construction other than the interior renovation of the garden room to accommodate the mausoleum, with stained glass windows on the exterior. Staff recommended approval of the application.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the requested mausoleum was a permitted accessory use to a monastery. She said there were no other changes proposed. She stated that the existing FAR on the property was 0.0835, which was less than one half of what was permitted by Fairfax County. She explained that the mausoleum would only be used for the members of the Poor Clares community and was not open to the public and would not be visible from the exterior. She stated that the surrounding neighborhood was in support of the application.

Chairman DiGiulian called for speakers.

Kerry Carter, no address given for the record, came forward to speak. She stated that the Sisters wanted to keep the community together even after death. She requested that the Board approve the application.

Lily Peers, no address given for the record, came forward to speak. She stated that the Poor Clares provided important spiritual support for the neighborhood. She requested that the Board approve the request.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 82-V-052-3 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., SPA 82-V-052-3 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-052 previously approved for a monestery to permit a mausoleum. Located at 2501, 2503 and 2505 Stonehedge Dr. on approx. 6.45 ac. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((1)) 4 and 93-3 ((8)) (3) 1, 2 and 3. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 12, 2002; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 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, 2501 – 2505 Stonehedge Drive (6.45 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Frederick E. Sheridan, certified architect, dated March, 1992, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity of the chapel shall be sixty (60) seats.
6. A maximum of twenty-six (26) parking spaces shall be maintained as shown on the Special Permit Amendment Plat.
7. The number of residents on the site shall be limited to thirty (30)

Page 236, February 12, 2002, (Tape 1), COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., SPA 82-V-052-3, continued from Page 235

8. Transitional Screening 1 shall be modified in favor of existing trees and vegetation on site and the additional trees and plantings as shown on the special permit amendment plat. Any dead or dying shrubbery shall be replaced with like kind to maintain the existing transitional screening.
9. The barrier requirement shall be satisfied by the provision of the four foot high wooden and six foot high chain link fences shown on the plat.
10. Stormwater management system shall be provided as determined by DPWES and all findings and recommendations for stormwater management shall be implemented to the satisfaction and approval of the Director, DPWES.
11. The mausoleum shall only be used for the residents of the Community of the Poor Clares of Alexandria.

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 be obtained. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble 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 February 20, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 236, February 12, 2002, (Tape 1), Scheduled case of:

9:30 A.M. JAMES J. AND MARY D. BRIODY, A 2001-PR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are maintaining a fence on a corner lot which exceeds 4.0 ft. in height and which obstructs sight distance, all in violation of Zoning Ordinance provisions. Located at 10007 Oakton Crossing Ct. on approx. 17,266 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 5.

This appeal was administratively moved to March 26, 2002, at 9:30 a.m.

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Page 236, February 12, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MARK J. AND LAVONNE C. ROLINCIK, A 2001-SP-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are occupying the subject property without having obtained a Residential Use Permit in violation of Sect. 18-701 of the Zoning Ordinance. Located at 12509 Easter La. on approx. 1.07 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((5)) 40. (Admin moved from 10/9/01) (Def. From 9/11/01 and 9/18/01) (continued from 9/25/01) (def. from 12/18/01)

Maggie Stehman, Zoning Administration Division, explained that a Non-Rup had been issued for the property and requested that the Board dismiss the appeal.

Page 237, February 12, 2002, (Tape 1), MARK J. AND LAVONNE C. ROLINCIK, A 2001-SP-016, continued from Page 236

Mr. Hammack moved to dismiss A 2001-SP-016. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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Page 237, February 12, 2002, (Tape 1), Scheduled case of:

9:30 A.M. KRISTIAN AND SANDRA MOTZ, A 2001-PR-050 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' proposed construction of a residence, including the berm proposed to act as a flood control levee, in a major floodplain does not qualify as a permitted use under the Floodplain Regulations of Sect. 2-903 of the Zoning Ordinance. Located at 2121 Woodford Road on approx. 1.84 ac. of land zoned R-1. Providence District. Tax Map 39-1 ((7)) 11.

Jerry Stonefield, Stormwater Engineer, EFRD, OSDS, DPWES, presented staff's position as contained in the staff report. This was an appeal of an October 30, 2001, determination that the proposed construction of a residence, including the berm proposed to act as a flood control levee, in a floodplain, did not qualify as a permitted use in a floodplain under the Floodplain Regulations of Zoning Ordinance Sect. 2-903 and would require the approval of a Special Exception by the Board of Supervisors as set forth in Zoning Ordinance Sect. 2-904. The Director of the Department of Public Works and Environmental Services was responsible for the administration of Part 9 of Article 2 of the Zoning Ordinance (per Zoning Ordinance Sect. 2-902.2). That Sect. 2-903 lists the uses and topographic improvements that may be permitted in a floodplain upon a determination by the Director that such use was permitted in the Zoning District in which it was located, and the uses are in accordance with the provisions of the standards and criteria set forth in the Public Facilities Manual (PFM). Any use, including associated fill, permitted in the Zoning District in which it was located, which did not meet the qualifications as determined by the Director, may be permitted upon the approval of a special exception by the Board.

It was the Director's position that the proposed construction in a floodplain of a new residence, including a berm, did not qualify as a permitted use in a floodplain under the Floodplain Regulations of Para. 9, Sect. 2-903, and required the approval of a Special Exception by the Board of Supervisors as set forth in Sect. 2-904.

The proposed development did not qualify as a permitted use in accordance Sect. 2-903 for several reasons: The total amount of fill proposed in the floodplain was considered major fill. Major fill is any fill, regardless of amount, in an area greater than 5000 square feet or any fill in excess of 278 cubic yards in an area of 5000 square feet or less. The combined and cumulative area of any fill and pavement can not exceed an area of 5000 square feet for all uses on a lot. The area within the limits of clearing and grading where fill and pavement are being placed must be considered fill for the calculation of the total area of fill on the lot, regardless of the amount of change in elevation proposed with the grading. The total proposed area within the limits of clearing and grading as shown on the plan was 0.2455 acres, or ten thousand six hundred ninety-four (10,694) square feet, which was in excess of the maximum allowed to qualify as a permitted use in accordance with Par. 9 of Zoning Ordinance Sect. 2-903 of the Zoning Ordinance and therefore a Special Exception is required.

The proposed development was for both a house and berm/levee in an area that is currently within a floodplain. The development could not be sequenced and must be considered as a whole. The proposed development showed the construction of the new house within an area that was currently floodplain. The proposed house was not a permitted use in a floodplain.

Sect. 2-903 provided that a use or topographic improvement may be permitted in a floodplain upon a determination by the Director that such use was in accordance with the provisions of this part of the Zoning Ordinance and the standards and criteria set forth in the Public Facilities Manual. There were no specific provisions in the Zoning Ordinance or standards and criteria set forth in the PFM regarding flood control levees. A flood control levee would act as an earthen dam embankment holding back the floodwaters. It was staff's determination that based, in part, on the conclusion that the berm/levee did not meet dam design standards and, therefore, was not considered adequate to hold back the flood waters. The area of the proposed house would be inundated, and, therefore, the 15 foot minimum yard requirements of Zoning

Ordinance Section 2-415 were not satisfied.

The issue regarding the nature and extent of the proposed fill was whether the proposed berm/levee would provide the necessary protection from inundation during the 100-year flood event, or would it fail and inundate the area of the proposed house.

Without levee standards adopted by the county, other established levee standards should be considered that provide reasonable assurance that protection from the base (100-year) flood exists. For the purposes of the National Flood Insurance Program (NFIP), Federal Emergency Management Agency (FEMA) had established minimum requirements for the design, operation and maintenance standards that the levee must meet, and continue to meet, before FEMA would recognize the levee system. The site was approximately 200 feet upstream of the end of the Special Flood Hazard Area (SFHA) as delineated by FEMA, so these standards would not be imposed by FEMA.

For the levee to be deemed adequate to meet the dam standards and/or FEMA's levee standards and hold back the flood waters from the area of the proposed house location, the width and height of the levee would have to be increased to a point where fill required would be in excess of 278 cubic yards, which does not qualify as a permitted use in accordance with Par. 9 of Sect. 2-903.

It was the Director's position, for the reasons stated, that a house with a levee was not a permitted use in the floodplain in accordance with Sect. 2-903, and a Special Exception was required in accordance with Zoning Ordinance Section 2-904. The determination was not that the applicant could not build the house with the levee, but that a Special Exception from the Board of Supervisors was required to do it. Even if the house and levee was considered a permitted use under Par. 9, major fill was required, given the specifics of this site and available design criteria, to create an adequate levee for this site and a Special Exception would be required in accordance with Sect. 2-904, therefore, the Director's determination should be upheld.

Keith Martin, agent for the appellants, explained that the appellants moved into the previous house on the property, which was less than 1,000 square feet in 1997. He said that as the family grew they began building plans for a new home in January 2000. He stated that the County approved the floodplain revision in August 2000, and the house was demolished in September 2001. He explained that the appellants' decision to demolish the home was based on an adjacent neighbor's experience with Fairfax County for an identical situation and the floodplain revision, however the County reversed their position on October 30, 2001, and the appeal was filed. He referred to Greg Budnik, an engineer who was familiar with the floodplain revision and worked with the adjacent homeowner to obtain administrative approval.

Greg Budnik, GJB Engineering, summarized for the Board the technical aspects of the appeal. He explained that the appellants' request from the Director of DPWES was limited to topographic improvement with the intent of filing for a building permit and a grading plan at some point in the future. He stated that the adjacent property had the same characteristics as the property in question and in 1996, the previous Director of DPWES administratively approved the proposed fill in the floodplain on that property and explained the sequence of steps that were taken to complete the fill in the floodplain. He stated that the appellants' request mirrored what was approved on the adjacent property. He suggested that the Director of DPWES could administratively approve the request because it had been done in the past, which would relieve the appellants from obtaining Special Exception approval. He noted that requests of this nature were routinely approved in the Mt. Vernon area.

Mr. Hart stated that there was a note on the floodplain revision which indicated that the construction of a new home on the property after the demolition of the existing home in what was major floodplain was not a permitted use under the Ordinance and special exception approval would be required. He asked who typed that information. Mr. Budnik replied that Don Laequement, DPWES, had typed that note. He explained that the purpose of the note was to alert the grading plan reviewers that a grading plan could not be approved without first conducting the fill necessary to move the floodplain.

Mr. Hart asked staff if there was any written interpretation regarding the sequencing process with regard to fill in the floodplain. Bruce Nassimbeni, DPWES, replied that the Zoning Ordinance stated that the Director of DPWES determined the amount of soil removal or fill and proposed grading that was necessary for the establishment of a use permitted in the Zoning District in which it was located. He explained that the 1996

approval violated the Ordinance. He stated that there could be no grading until a use had been established; therefore, the appellants could not establish a berm and then build a house without being in violation of the Ordinance.

Mr. Martin contended that the applicants' request was considered a topographic improvement to the floodplain which was a permitted use under the Ordinance.

Ms. Gibb asked staff if anything had changed within the County since 1996 that facilitated the decision of the current Director of DPWES. Mr. Nassimbeni replied that nothing had changed since 1996 and the previous approval was an error and not in conformance with the Zoning Ordinance.

Ms. Gibb asked what the appellants were relying on when they demolished their home. Mr. Martin replied that the floodplain revision was the motivating factor and because their request was identical to the adjacent property owner who was given approval.

Ms. Gibb asked what would happen at the Special Exception level. Mr. Stonefield replied that during the special exception process the applicant would have to reveal the entire amount of fill that was proposed to elevate the entire area out of the floodplain and fill in the entire area instead of creating a levee first.

Mr. Hammack asked Mr. Budnik under what approval the requests in the Mt. Vernon District were approved. Mr. Budnik replied that they were approved under a special exception.

Chairman DiGiulian called for speakers.

Dan McGuire, no address given for the record, came forward to speak. He stated that he owned the property adjacent to the appellants. He explained that he had obtained approval to fill in the floodplain in 1996 and he believed that after that approval it would be easier for the appellants to also get approval. He said that the appellants were having many of the same problems that he had during his request.

Anthony Falcone, 2200 Frank Street, came forward to speak. He stated that he was in support of the appellants.

Mr. Nassimbeni stated that staff had clearly indicated the need for special exception approval with the notation on the floodplain revision.

Mr. Budnik reaffirmed that the note on the floodplain revision was put there as an advisory to the County that the home could not be placed in that area of the floodplain until it was filled enough to not be considered floodplain.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that it was clearly notated on the floodplain revision that special exception approval was needed and staff was correct in wanting to look at the entire proposal and what was involved with the ultimate impact.

Mr. Pammel moved to uphold the decision of the Director of the Department of Public Works and Environmental Services with regard to A 2001-PR-050. Mr. Hart seconded the motion.

Ms. Gibb stated that since the County had not changed policy since the decision made in 1996 the appellant had the right to rely on that approval.

The motion carried by a vote of 5-2. Ms. Gibb and Mr. Kelley voted against the motion.

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of the Zoning Ordinance. Appeal of determination that previously cited violations regarding the addition of structures and storage display areas on the appellants' property continue. Located at 7600 Clifton Rd. on approx. 2.89 ac. of land zoned C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 15. (moved from 1/16/01 and 4/17/01) (Def. From 8/14/01) (Cont'd from 1/15/02)

Jayne Reale, Zoning Administration Division, presented staff's position as contained in the staff report. The appeal was of the determination that previously cited violations regarding the additions of structures and storage display areas on the referenced property continued. The January 7, 2002, memorandum in the staff report provided details on the background of the appeal. At issue in the current Notice of Violation was a greenhouse which was noted as a cold house on the site plan, a plant shade structure and a trailer with an attached deck which existed on the property without site plan approval at the time the Notice of Violation was issued. The appellants also did not have building permit approval or Non-Rup approval. The approved site plan indicated that the structures were to be removed and a note on the site plan suggested that they would be removed by construction progress. It was staff's position that the structures could remain until the development on the site required their removal. A letter received in August from the appellant's attorney at that time represented that the structures would be removed by the end of the 2001 year. During a recent inspection it was noted that the greenhouse had been removed but the plant shade structure, trailer, and deck remained on the property. The current violation had been in existence for over a year and a half. Staff emphasized that the remaining structures were the only issues before the Board.

William E. Shoup, Deputy Zoning Administrator, explained that there was site plan approval for the structures in question and the only outstanding issues that remained were the requirement of a building permit and a Non-Rup. He explained that initially staff failed to consider a notation on the site plan which indicated that the structures in question would be removed or relocated as it was necessitated by construction; therefore, it was staff's opinion that the structures could remain until construction necessitated their removal.

Mr. Hart asked for an explanation of why the structures would need a building permit and a Non-Rup. Mr. Shoup explained that the structures were added to the site and were viewed as an addition to the site; therefore, they required a building permit and Non-Rup approval.

Mr. Hammack asked how long the appellant had to obtain a building permit and Non-Rup approval. Mr. Shoup replied that they needed to be obtained immediately. Mr. Hammack asked how long was the site plan valid for. Mr. Shoup replied that the site plan approval was valid for five years however, the five-year approval did not extend to building permits and Non-Rups.

Kendrick Sanders, agent for the appellants, explained that the site plan had been circulating in various departments in the County for a period of four years due to issues of water and fire protection. He stated that the plant shade structure consisted of 4x4's on the ground with a net for a roof and the trailer had been on the site for many years and was used as an office and for record storage. He said that the structures in question did not cause any hazardous situations on the property. Mr. Sanders requested that the structures be allowed to remain without a building permit and a Non-Rup because they were legitimized under the approval of the site plan. He reiterated that the only issues in the appeal related to the remaining structures.

Mr. Pammel asked if the appellants were willing to address the issues of the building permits and the Non-Rup. Mr. Sanders explained that the appellants were willing to acquire them if the Board deemed that they were required.

The following citizens came forward to speak in opposition of the appeal:

Jane McWilliams, 11626 Henderson Road; Mary Stout, 7109 Swift Run Trails; Mrs. John Reaver, 7200 Wolf Run Schoals; Susan Reid, 11203 Silver Reef Drive; Edie Clark, 11930 Henderson Road; Lillian Knackmus, 7601 and 7603 Clifton Road; Dick Corns, 11720 Ampkin Drive.

The testimony from the citizens' pertained to issues of traffic, noise, lighting, and water and fire protection. The Board stated that their issues did not pertain to the issues contained in the appeal and they provided the citizens with information as to the appropriate offices of the County to contact with their concerns.



Page 241, February 12, 2002, (Tape 1), DONALD E. CRUMP AND CHESLEY CRUMP, A 2000-SP-029, continued from Page 240

Mr. Sanders stated that none of the testimony related to the issues outlined in the appeal. He rebutted several issues pertaining to lighting, and water and fire protection that the citizens had brought forward.

Ms. Reale reiterated staff's position that building permits and Non-Rups were required for the structures and in the past staff had consistently issued building permits and Non-Rups for similar type of structures.

Vice Chairman Ribble closed the public hearing.

Mr. Hart suggested a deferral to allow staff to obtain information as to whether or not building permits were required for the structures and to give the appellants time to apply for the building permits if they were required.

Mr. Hart moved to defer decision regarding A 2000-SP-029 to March 19, 2002, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian recused himself from the hearing.

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Page 241, February 12, 2002, (Tape 1), After Agenda Item:

Approval of BZA Public Hearing dates for the latter six months of 2002

Mr. Pammel moved to approve the dates with the additional date of November 26, 2002, on an as needed basis. Mr. Hart seconded the motion, which carried by a vote of 7-0.

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Page 241, February 12, 2002, (Tape 1), After Agenda Item:

Approval of February 5, 2002 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:26 p.m.

Minutes by: Lori M. Mallam

Approved on: August 13, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 19, 2002. The following Board Members were present: Vice Chairman Paul Hammack, Nancy Gibb, James Hart, Robert Kelley, and James Pammel. Chairman John DiGiulian and John Ribble were absent from the meeting.

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

Page 243 February 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DAVID L. & SANDRA J. GIDDENS, VC 01-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 7921 Tire Swing Rd. on approx. 13,402 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-4 ((45)) 16. (Admin moved from 10/23/01 and 12/4/01 for notices)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dana Giddens came forward to explain that she was present to represent the Giddens. She said Mr. Giddens was out of the country on business, and that Sandra Giddens was no longer with them.

Vice Chairman Hammack asked if Ms. Giddens was listed on the affidavit. She replied that she was not.

Vice Chairman Hammack asked Susan Langdon, Chief, Special Permit and Variance Branch, if the case could go forward. Ms. Langdon replied that it could not go forward without Ms. Giddens on the affidavit, and that the application would have to be readvertised.

Ms. Gibb moved to defer the public hearing to April 9, 2002 at 9:00 a.m. Mr. Kelley seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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Page 243 February 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. PHILLIP L. & VALERIE C. BROWN, VC 01-D-202 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 13.0 ft. from side lot line. Located at 950 Saigon Rd. on approx. 3.30 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((7)) 2A, B1 and A1.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jan Ochab, Agent, 3000 Spout Run Parkway, Unit C-508, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicants sought a variance to permit construction of an accessory structure consisting of a detached garage 13.0 feet from the side lot line. The Zoning Ordinance required a minimum of 20 feet; therefore, a variance of 7.0 feet was requested.

Mr. Ochab presented the variance request as outlined in the statement of justification submitted with the application. He stated that the applicant would like to have a variance for a garage and art studio. He said that due to the location of the main dwelling, floodplain, easements, location of the septic system and rare Chinese maple trees on site, it was determined that the proposed area was the only reasonable location for the structure. Mr. Ochab stated that the proposed architecture matched the style of the existing house and a greenhouse would be removed from the property.

Mr. Hart asked if the proposed art studio above the garage would have any plumbing or kitchen facilities, or if anyone would be living there. Mr. Ochab replied that it would have plumbing for a bathroom, but would have no other facilities and no one would live there.

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

Mr. Pammel moved to approve VC 01-D-202 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

PHILLIP L. & VALERIE C. BROWN, VC 01-D-202 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 13.0 ft. from side lot line. Located at 950 Saigon Rd. on approx. 3.30 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((7)) 2A, B1 and A1. 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 19, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot has exceptional topographical conditions, and is unusually configured.

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

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

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

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

Page 245 February 19, 2002, (Tape 1), PHILLIP L. & VALERIE C. BROWN, VC 01-D-202, continued from Page 244

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, shown on the plat prepared by George M. O'Quinn, dated October 25, 2001, as revised through November 19, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Hart seconded the motion, which carried by a vote 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 27, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 245, February 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      LAWRENCE DOLL COMPANY, VC 01-L-199 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 15.0 ft. and to permit construction of a 6.0 ft. high fence in the front yard. Located at 6001 South Van Dorn St. on approx. 35,557 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 39.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Lang, 12700 Fair Lakes Circle, Suite 385, Fairfax, replied that it was.

Mr. Hart stated that a memo had been received from Barbara Lippa, Planning Commission (PC), dated February 8, 2002, regarding the subject application. He stated that based on the contents of the memo, he questioned if the Board should proceed with the public hearing or wait until after the PC meeting on March 6, 2002.

Mr. Lang stated that he would be willing to defer the public hearing until after the Planning Commission hearing. He said he was also open to going forward if the Board wanted.

Mr. Kelley moved to defer VC 01-L-199 until after March 6, 2002. Mr. Hart seconded the motion.

There were no speakers to address the deferral, and Vice Chairman Hammack closed the public hearing.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the case could go forward on March 12, 2002, at 9:00 a.m.

Mr. Kelley amended his motion to defer VC 01-L-199 to March 12, 2002, at 9:00 a.m. Mr. Pammel seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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Page 246 February 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DEAN & HEIDI CLANCY, VC 01-B-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.24 ft. from rear lot line. Located at 8807 Willow Ridge La. on approx. 10,512 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 291. (Moved from 1/8 for notices)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dean Clancy, 8807 Willow Ridge Lane, Annandale, Virginia and replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She said the applicant sought a variance to permit the construction of a screened porch 21.24 feet from the rear lot line. She stated that the screened porch would replace and slightly extend the existing screened porch. She said the Zoning Ordinance required a minimum of 25 feet; therefore, a variance of 3.76 feet was requested.

Mr. Clancy presented the variance request as outlined in the statement of justification submitted with the application. He stated that they would like to replace their screened porch with a sunroom, which would be slightly larger than the existing porch. He said the porch was at least 10 years old, and had conveyed several times without being brought into compliance. He stated that to his knowledge, his neighbors did not object to the proposed structure.

Mrs. Clancy came forward to clarify that, although the staff report stated that the screened porch would be replaced with another screened porch, the applicants had actually requested a sunroom addition.

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

Mr. Hart moved to approve VC 01-B-165 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DEAN & HEIDI CLANCY, VC 01-B-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.24 ft. from rear lot line. Located at 8807 Willow Ridge La. on approx. 10,512 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 291. (Moved from 1/8 for notices). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 19, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot has an irregular shape and is at the end of a cul-de-sac.
4. The lot is small and shallow.
5. The proposed addition is just a little larger than the existing screened porch.
6. There would not be any significant negative impact on the neighbors to the rear of the lot.

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

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

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Karie L. Colburn, dated August 31, 2001, as revised through October 16, 2001, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The sunroom addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 27, 2002. This date shall be deemed to be the final approval date of this variance.

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the Zoning Ordinance to permit construction of additions 4.1 ft. and 4.8 ft. from side lot line. Located at 6311 Beachway Dr. on approx. 14,300 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 1023A.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary Anne Lecos, 6311 Beachway Drive, Falls Church, Virginia and replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of a carport addition to be located 4.1 feet from the side lot line and another addition consisting of a screened porch with garden storage area to be located 4.8 feet from the same side lot line. He stated that the minimum side yard requirement was 15 feet; therefore, variances of 10.9 feet and 10.2 feet were requested, respectively.

Ms. Lecos presented the variance request as outlined in the statement of justification submitted with the application. She stated that she felt the new additions would increase her safety and comfort. She said both she and her husband had slipped on black-ice in the driveway because of the property's incline. She said she believed that the carport would allow them to have the two cars under cover during inclement weather. Ms. Lecos said she was unaware of any objections by her neighbors and the closest neighbor to the addition was supportive of the application.

Ms. Gibb clarified that the new carport would have a solid wall on one side instead of being opened, like the existing one. Ms. Lecos replied that the wall was actually a place for her trash containers and it would be open on the top but the walls would be tall enough to screen the receptacles from view.

Ms. Gibb clarified that the existing carport would remain unchanged except the roof would extend over it. Ms. Lecos replied that was correct.

Ms. Lecos stated that the neighbors most impacted by the addition had a blind wall on the adjacent side of the property, which was their garage. She said they also had an indoor swimming pool that went further into the back, and the wall had no windows and therefore they would not be affected.

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

Ms. Gibb moved to approve VC 01-M-198 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARY ANNE LECOS, VC 01-M-198 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 4.1 ft. and 4.8 ft. from side lot line. Located at 6311 Beachway Dr. on approx. 14,300 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 1023A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 19, 2002; 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 does not appear to be any other location on the property for the carport.



4. Although the wall will be 4.1 feet from the side lot line, the impact will be minimal due to the fact that the wall will not be solid.
5. The proposed garden shed will be against another blind wall of the adjacent property.

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

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

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

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

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

1. This variance is approved for the location of additions as shown on the plat prepared by Charles E. Janson, dated, October 25, 2001, signed November 21, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 27, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 250 February 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. D.R. HORTON, INC., VC 01-V-201 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 4.4 ft. from a floodplain. Located at 5411 Grist Mill Woods Way on approx. 23,047 sq. ft. of land zoned R-2 and HD. Mt. Vernon District. Tax Map 109-2 ((8)) 20.

9:00 A.M. D.R. HORTON, INC., VC 01-V-200 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 6.7 ft. from a floodplain. Located at 5410 Grist Mill Woods Way on approx. 25,629 sq. ft. of land zoned R-2, HC and HD. Mt. Vernon District. Tax Map 109-2 ((8)) 19.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patrick Via, Agent, 8221 Old Courthouse Road, Suite 300, Vienna, Virginia replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of a single dwelling on each of two lots to be located 6.7 feet from the floodplain on Lot 19, and 4.4 feet from the floodplain on Lot 20. He said the minimum distance required for a dwelling from a floodplain was 15 feet; therefore, variances of 8.3 feet for Lot 19 and 10.6 feet for Lot 20 were requested.

Mr. Via presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was originally part of a larger tract of land that abutted the historic Grist Mill that was owned by the Mt. Vernon Ladies Association. He said the prior developer had made an agreement with the Grist Mill that would limit the density of the land to 30 single family homes and the remainder of the property would be donated to the Grist Mill. He said he later learned that the prior owner had also agreed to give Lot 30 to the Grist Mill.

Mr. Via stated that when the detailed engineering was done, the two lots that abutted the floodplain and the building envelopes would have to be extremely small and narrow. He said that the standard units approved for this particular subdivision would not fit on the land, and therefore, the variances were needed.

Mr. Via explained, in depth, the topography of the floodplain as it related to the two properties. He said that the homes proposed to be built on the two lots would conform with the neighborhood and would be very beneficial to the community.

Vice Chairman Hammack called for speakers.

Sheila Burke, 5310 Old Mill Road, came forward to speak in opposition to the application. She stated that she had lived in her home for the last 25 years opposite the Grist Mill. She spoke of the flooding that regularly occurred in that area, which she believed would affect the new housing development. She spoke in detail of the history of the multiple County meetings, plats, waivers and special exceptions regarding that area.

William Burke, 5310 Old Mill Road, came forward to speak in opposition to the application. He stated that his concern was that the applicant claimed a hardship due to the donated land. He said the land had been donated before the developer bought the remainder of the property, and therefore, did not believe it was a real hardship.

Page 251, February 19, 2002, (Tape 1), D.R. HORTON, INC., VC 01-V-201 and D.R. HORTON, INC., VC 01-V-200, continued from Page 250

Mr. Via stated in his rebuttal that actually both developers had agreed to donate property to the Grist Mill. He said the applicant was committed to preserving as much land as possible. He said the hardship would be felt by the new homeowners in that area if the variances were not allowed, as it would negatively affect the value of the land and houses.

Mr. Pammel asked if the applicant would be agreeable to moving the two houses forward by approximately 5 feet. Mr. Via replied that they would be agreeable to that if necessary.

Mr. Kelley moved to continue VC 01-V-201 and VC 01-V-200 to April 16, 2002, at 9:00 a.m., to give the applicant time to revise the plat to change the placement of the two houses on the lots. He said that when the houses were moved, the variances needed would be minimal. Mr. Pammel seconded the motion.

Mr. Hart requested that staff provide an environmental study before the next hearing date. Ms. Langdon replied that they would do so.

Vice Chairman Hammack called for a vote of the motion, and it carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble was absent from the meeting.

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Page 251, February 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS A. TYLER, VC 01-B-203 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line. Located at 7418 Axton St. on approx. 14,765 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (17) 20.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas A. Tyler, 718 Axton Street, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of a one-story addition to be located 8.9 feet from the side lot line. He said the Ordinance required a minimum side yard of 12 feet; therefore, a variance of 3.1 feet was requested. He stated that a similar application had been brought before the Board in March 1999, by the same applicant.

Mr. Tyler presented the variance request as outlined in the statement of justification submitted with the application. He stated that three years ago, he went before the Board with the same request and the Board had given approval for his variance. He said when he went to get the building permit a few months ago, he was told that the variance had expired.

Mr. Tyler stated that the circumstances remained the same as in the previous variance. He said they had hired an architect for the project and his neighbors had no objections.

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

Mr. Pammel moved to approve VC 01-B-203 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS A. TYLER, VC 01-B-203 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line. Located at 7418 Axton St. on approx. 14,765 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (17) 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 February 19, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Charles R. Johnson, dated, November 20, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice,

Page 253 February 19, 2002, (Tape 1), THOMAS A. TYLER, VC 01-B-203, continued from Page 252

thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 27, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 253 February 19, 2002, (Tape 1 and 2), Scheduled case of:

9:30 A.M. HELEN M. SHIROMA, A 2001-MA-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property was not legally subdivided and, therefore, no Building Permit can be issued for the erection of any building or structure on the lot, in accordance with Par. 1 of Sect. 18-603 of the Zoning Ordinance. Located at 4921 Virginia St. on approx. 3.08 ac. of land zoned R-2. Mason District. Tax Map 72-3 ((13)) 5.

Vice Chairman Hammack called the applicant to the podium and asked him to state his name. David Shiroma stated his name and said he represented his wife, Helen in this hearing.

Mr. Shiroma stated that the Zoning Administration had told him that a building permit could not be issued for his three acre lot, located at 4921 Virginia Street, also known as Lot 5. He said they told him the reason was because the property had not been properly recorded in the Fairfax County land records in the past.

William Shoup, Deputy Zoning Administrator, stated that their office had received a letter from the Lincolnia Park Civic Association and they had requested a one month continuance of this appeal.

Ms. Gibb asked for clarification on the procedure if someone other than the applicant asked for a deferral. Mr. Shoup stated that anyone could ask for a case to be deferred. He said there was a legal statute which required that a case be heard within 90 days of when it was filed unless there was joint concurrence between the BZA and the appellant to go beyond the 90 days. Mr. Shoup said that the application was filed on November 14, 2001, and was slightly past the 90 day mark.

Vice Chairman Hammack asked Mr. Shiroma for his position on the request for a deferral. Mr. Shiroma stated he was opposed to a deferral since the notices had been mailed out on January 16, 2002 and the deferral letter had not arrived until February 13, 2002.

Vice Chairman Hammack stated that the Board would hear the case because of the 90 day statute.

John Bell, Assistant to the Zoning Administrator, presented the appeal before the Board. He said that the appellant's property had not been legally subdivided in the past and therefore, a building permit could not be issued for the erection of any building or structure on that land.

Mr. Bell stated that it appeared that the subject property had been part of the re-subdivision of Lot 93 and Lot 94 of the Southern Villa Subdivision. He said that the deed records for the surrounding lots indicated that the re-subdivision of Lot 93 and Lot 94 were based on an unrecorded plat, surveyed by Joseph E. Berry, County Surveyor, on August 7, 1935. Mr. Bell said there were not any records to show that the plat had been approved by the County Engineer, which would have been required under the 1929 Subdivision Ordinance. He stated that there was no indication that the subdivision was ever recorded in the land records as required.

Mr. Bell stated that the appellants had asserted that this issue was created by an error of a County employee, Joseph E. Berry in his capacity as County Surveyor, and that the County should resolve the subdivision issues related to the subject property. He said that it appeared from the plat for the subject property that the subdivision of the land took place on August 7, 1935, based on an unrecorded plat signed

by Mr. Berry. Mr. Bell stated that since the plat had not been approved by County Authorities at that time, there apparently had not been a legal plat available since then.

Mr. Bell stated that under the current Zoning Ordinance and Subdivision Ordinance there was no way to provide the property owner with relief to declare the lot a buildable lot in its current configuration. He stated that land records indicated that the property was unbuildable; however, it had always been taxed as a buildable lot.

Ms. Gibb said that in 1935 the lot appeared to be created by an unrecorded subdivision by Mr. Berry by metes and bounds, and it conveyed through the years as such.

Mr. Bell said that the deed records for the surrounding properties had been very unclear, and the staff ran into multiple dead-ends in trying to find the preceding deeds. He said the earliest deed found for the subject property was in 1972, and prior to that, there were no references in the deed records regarding the land. Attempts to search for the other deeds of the adjacent properties had also been unsuccessful.

Ms. Gibb stated that during the 1940's it was legal to convey lots by metes and bounds at the very minimum. She said that her files were filled with those conveyances. She suggested that the appellant needed to hire an attorney who had the time to do a lot of research in order to get the needed information, as it was a lengthy process.

Ms. Shoup stated that the Zoning Administration recognized that there was a significant problem in the County with these types of lots, and they were just now seeing them due to the shortage of land in Fairfax County. He said he had spoken with DPWES and it could not be concluded that the lot was legally subdivided. He stated that the subject property never had any zoning issues, but the current provision of the Zoning Ordinance stated that a lot must be in compliance with the Subdivision Ordinance in order to be issued a building permit.

Mr. Hart gave a brief synopsis on the area surrounding Lot 5 based on the tax map.

Mr. Shiroma stated that he had gone to an attorney to see if they could help him with his situation and was advised to go before the BZA himself, as the attorney did not think she could help him. He said that it was written in the staff report that he had an option to subdivide the property into two or more lots, and then get it zoned as a new subdivision. He stated that he would like to do that with the Board's approval.

Vice Chairman Hammack stated that the Board did not have the authority to give a two-lot subdivision and Mr. Shiroma would have to go through the County procedures for subdividing. He said that if Mr. Shiroma wanted, he could ask the Board to defer decision on this hearing while he pursued different alternatives, thereby preserving his appeal of the Zoning Administrator's decision.

Mr. Bell stated that if Mr. Shiroma decided to take the option of subdividing, the staff wanted Mr. Shiroma to clearly understand everything that went with it. He said that Mr. Shiroma would be subject to all the Subdivision Zoning Ordinance provisions, which typically included public street improvements, sidewalks, curb and gutters. He stated that he wanted to help Mr. Shiroma understand that it would be an expensive option.

Vice Chairman Hammack also explained the options and consequences in Mr. Shiroma making his decision.

Mr. Pammel asked Mr. Bell that if the lot was illegal, how could Mr. Shiroma get around that for the subdivision of a parcel of land that had not been properly created. Mr. Bell replied that these were the options presented to him by staff and DPWES as the only viable options available to Mr. Shiroma.

Mr. Pammel made a motion to have the County Attorney review the situation and give an interpretation on the County's position.

Ms. Gibb seconded the motion.

Page ~~255~~ February 19, 2002, (Tape 1 and 2), HELEN M. SHIROMA, A 2001-MA-044, continued from Page ~~254~~

Mr. Hart suggested to Mr. Shiroma that he also needed to hire a lawyer to investigate the title insurance for the land. He spoke of the Board of Equalization that could possibly help Mr. Shiroma with relief of tax assessments.

The motion carried with a 5-0 vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

Mr. Shiroma stated that his understanding of what had proceeded and what the Board suggested he do was to allow the staff to contact the County Attorney's office to get an interpretation on this particular problem. If that was so, he agreed to a deferral.

There were no speakers to address the deferral of the hearing.

Mr. Pammel moved to defer the hearing until June 25, 2002, at 9:30 a.m. Ms. Gibb seconded the motion, which carried 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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The Board recessed at 11:05 a.m. and reconvened at 11:15 a.m.

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Page ~~255~~ February 19, 2002, (Tape 2 and 3), Scheduled case of:

9:30 A.M. GLADIS ONDINA DIAZ AND RAMIRO AREVALO, A 2001-LE-027 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard/storage yard use on the subject property in violation of various Zoning Ordinance provisions. Located at 7804 Cinder Bed Rd. on approx. 1.0 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 14. (Def. from 11/27/01 and 1/8/02 for notices).

Vice Chairman Hammack called A 2001-LE-027.

Daryl Varney, Assistant to the Zoning Administrator, gave a synopsis of the appeal and on-going efforts of the Multi-Agency Task Force for the Cinder Bed Road area. He stated that there were still ongoing investigations for zoning and other violations on Lot 26 on Cinder Bed Road. Mr. Varney stated that the Board of Zoning Appeals recently upheld the decision by the Zoning Administrator against Mr. Cifuentes, who owned the adjacent property and had been cited for the same violations of a junkyard.

Mr. Hart and William Shoup, Deputy Zoning Administrator, discussed photos taken of the properties and where the floodplain was in comparison to the properties.

Richard During, Agent, asked for clarification of the floodplain, and stated that he did not know where it ended. He said he understood that 90% of the appellant's property was in the floodplain. Mr. Shoup replied that was correct.

Mr. During stated that he wanted to request a deferral for his case. He stated that he had gotten into the case very late, and asked for some time to allow his client to have a site plan prepared and submit it to the County. He said he firmly believed that his client was willing to work with the County and help it to achieve its objectives of clearing the property. He said his client intended to work within the law to give the economic benefits that would accrue from his client's property.

Ms. Gibb asked Mr. Shoup what would happen next if the Board upheld the Zoning Administrator.

Mr. Shoup stated that his office would file for Injunctive Relief. He said he had a discussion with Mr. During that morning prior to the hearing and he had told Mr. During that it was his intent to go forward with the Injunctive Relief. He said Mr. During had wanted to discuss with him various ways to resolve the violations for his client. He stated that he would be glad to do that, but would prefer to do it within a Consent Decree.

Mr. Shoup stated that there had been significant violations and activity on Cinder Bed Road. He said they

had some success on the other properties by pursuing cooperation through the Injunction process and he believed that this was also the best way to resolve the issues on Ms. Diaz' property. He stated that he objected to the request for a deferral.

Mr. Hammack asked Mr. During how soon he intended to take action. Mr. During replied that there were many people who would have to move and there were tenants on Ms. Diaz' property who were very upset because of the short notice that she had given them to vacate the property. He said he had given two written proposals to Mr. Shoup specifically detailing what they had intended to do.

Mr. During stated that they intended to start cleaning up the small stream that crossed both the Diaz and Cifuentes property. He said they intended to vacate at least three to six tenants per month. He said this would all take a lot of time, effort and coordination. Mr. During stated that it would not be an easy task to get eight to ten trucks to remove the numerous items.

Mr. Hart asked how people accessed Ms. Diaz' property, and if they had to cross over Mr. Cifuentes' property to ingress and egress her property. Mr. During replied that there was no formal easement but a verbal understanding between Mr. Cifuentes and Ms. Diaz. He said she would just ask permission of him as needed.

Mr. Shoup stated in his rebuttal that the original Notice of Violation had been issued on August 14, 2001, and the hearing had already been deferred twice to come together just to discuss the floodplain area. He said the subject property had serious ongoing problems and it would be difficult to get any type of authorization to conduct a legitimate use. He stated that with all its deficiencies, clearing up the land would not happen quickly. He stated that, as with the Cifuentes case, it was time to move forward.

Mr. Shoup reminded the Board that Supervisor Kaufmann had spoken at Mr. Cifuentes' hearing to voice his concern over the multiple activities on Cinder Bed Road. He said Supervisor Kaufmann asked again that Mr. Shoup reiterate his concerns for that area.

Mr. During stated that his position had been purely speculative on the time needed to acquire the services of an engineer. He stated that he had been to the subject property the day prior to the meeting and, since Ms. Diaz received Notice of Violations, the level of activity had declined substantially. He stated that all scrap metal had been removed from the ground and there were still some vehicles that needed to be moved which would take time.

Mr. During stated that he thought Supervisor Kaufmann had spoken on behalf of Ms. Diaz, as he would like to see fairness done by the BZA. He said that fairness would be to withhold the decision and give the appellant an opportunity and time to work with the County to develop further plans.

Mr. During stated that Ms. Diaz had spent substantial money in the purchasing of her property and would certainly like to see the property be used economically and within the law. He said he believed that a deferral for a few weeks would not defeat the efforts of the County.

Ms. Gibb asked what would be accomplished if the Board granted a two month deferral. Mr. During replied that would give his client time to get notices out to all tenants and get the tenants to stop performing all types of services on the property. He said they would file an Unlawful Motion on one of the tenants who refused to move. He said they would secure the services of an engineer to develop a site plan that could be submitted to the County, and put the site plan through in order to have the land usable again.

Ms. Gibb asked for clarification on the Injunction, time and process involved. Mr. Shoup gave a brief explanation, and stated that he would prefer to get the Injunction and then work with Ms. Diaz to arrive at an agreeable Consent Decree.

Ms. Gibb asked if Mr. Shoup thought that a deferral would be faster than an injunction. Mr. Shoup replied that he felt it would make the process longer. He stated that there would be people who would not be willing to move off the property, and then there would be a few months delay in getting those people to move.

Mr. Shoup said there was nothing legally binding on the properties, and they would have to get an Injunction



Page 257, February 19, 2002, (Tape 2 and 3), GLADIS ONDINA DIAZ AND RAMIRO AREVALO, A 2001-LE-027, continued from Page 256

at that time. He said this would entail more time. He said that he felt it was better to file for the Injunction and then work with Mr. During while not losing any more time.

Mr. During stated in his rebuttal that he had submitted two written proposals to Mr. Shoup. He said that Mr. Shoup stated that the first proposal was not detailed enough, and he had not been able to get hold of Mr. Shoup for the second proposal. He said he felt they were showing good faith, that they intended to get the people off the property, and to submit a site plan to the County.

Mr. Hart moved to uphold the Zoning Administrator's decision. He stated that he felt too much time would pass before any results were seen, which would put the Zoning Administrator's office further behind. He said he believed that there would be sufficient time for Mr. During to get an engineer and to work with Mr. Shoup in developing a Consent Decree.

Mr. Pammel seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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Page 257, February 19, 2002, (Tape 3), After Agenda Items:

Request for Additional Time  
New Jerusalem Church, SP 95-S-071

Mr. Kelley moved to approve the additional time for SP 95-S-071 of 24 months to August 21, 2003. Mr. Pammel seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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Page 257, February 19, 2002, (Tape 3), After Agenda Items:

Request for Additional Time  
Barbara Farishian, VC 99-D-059

Mr. Kelley moved to approve the additional time for VC 99-D-059 of 12 months to January 21, 2003. Ms. Gibb seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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Page 257, February 19, 2002, (Tape 3), After Agenda Items:

Approval of February 12, 2002 Resolutions

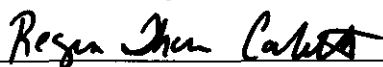
Mr. Pammel moved to approve the Resolutions of February 12, 2002. Ms. Gibb seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Judith A. Gobbi

Approved on: May 20, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 26, 2002. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Chairman John DiGiulian was absent from the meeting.

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

Page 259 February 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. HASSANIN A. ISMEAIL, VC 01-Y-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from the rear lot line. Located at 13407 Glen Taylor La. on approx. 10,844 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 272. (Admin moved from ind.def. per appl req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hassanin Ismeail, 13407 Glen Taylor Lane, Herndon, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 14 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 11 feet was requested.

Mr. Ismeail presented the variance request as outlined in the statement of justification submitted with the application. He said the deck was built in 1990 and they wanted to use a portion of the deck for the addition. He said they received homeowners association approval. Mr. Ismeail stated that most of the neighbors supported the application.

Mr. Hammack asked if the request was for a screened porch. Mr. Ismeail replied that the request was for a screened porch on a portion of the deck. He submitted photographs.

Mr. Hammack noted that the photographs reflected a neighbor with a screened porch. Mr. Ismeail stated that the owners of Lots 271 and 274 had similar additions.

Vice Chairman Ribble called for speakers.

Mrs. Ismeail came forward, to speak in support of the application, stating that they were requesting to convert a portion of the deck to have a screened porch. She said the addition would add value to the property and there were a number of neighbors with similar additions. Mrs. Ismeail stated that there were other neighbors who received variance approvals. She submitted a petition with signatures of neighbors that were in support of the application. Mrs. Ismeail stated that the addition would not encroach any further into the yard.

Dan Clark, 13409 Glen Taylor Lane, came forward to speak in opposition. He presented a letter from the owner of Lot 271 indicating their opposition to the application. Mr. Clark submitted a schematic drawing of the properties and stated that the addition would cause a cramped feeling on the lot. He said the applicants had no back yard and the addition would interfere with their privacy because there would be a clear view of the kitchen and patio. Mr. Clark said the addition would be a substantial detriment to the neighborhood.

Mr. Hammack asked how the screened porch would affect Mr. Clark's privacy more than the deck. Mr. Clark replied that a screened porch would get more use than a deck.

Ann Clark, 13409 Glen Taylor Lane, came forward to speak in opposition. She said the approval letter from the homeowner's association was invalid because it had expired.

Mr. Ismeail stated in his rebuttal that the Clarks were originally in support of the application. He said they no longer supported the request because they were moving and selling their house. Mr. Ismeail stated that the Clarks could not see through the evergreen trees that separated their property.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack said the applicant's property was a corner lot with an irregular lot line with a curve in front of the property and it also went into another curve into the side yard to accommodate the cul-de-sac. He said as a result of that, the house was placed to the rear of the property. Mr. Hammack said he understood some of the objections to further construction; however, he felt that the addition of the screened porch on an existing deck would not have a detrimental impact on the neighborhood. He said there was no other feasible location for the addition.

Mr. Hammack moved to approve VC 01-Y-137 for the reasons noted in the Resolution.

Mr. Hart stated that he would support the motion because of the existing vegetation of large evergreen trees between the applicant's property and the Clarks property.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HASSANIN A. ISMEAIL, VC 01-Y-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from the rear lot line. Located at 13407 Glen Taylor La. on approx. 10,844 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 272. (Admin moved from ind.def. per appl req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 26, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is unusually configured.
4. The addition will not cause substantial detriment to adjacent property owners or change the character of the zoning district.
5. Curvature in the front requires placement of the house to the rear of 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 Daniel L. Wachob, dated February 20, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion, which carried by a vote of 6-0. 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 March 6, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 261, February 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      GEORGE HAINES, VC 01-B-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.6 ft. from side lot line. Located at 8808 Cromwell Dr. on approx. 13,125 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((5)) 181. (Def. For Dec. on 2/12/02)

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. George Haines, 8808 Cromwell Drive, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She noted that the application had been deferred for decision only from February 12, 2002, so that the applicant would have time to re-evaluate the location of the addition and to return with a new plat. Ms. Stanfield stated that a new plat had been distributed to the Board. She said the plat reflected that the addition had been moved 1.0 foot away from the property line from the request previously submitted by the applicant.

Mr. Pammel said the revised plat satisfied his concerns. He moved to approve VC 01-B-192 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

GEORGE HAINES, VC 01-B-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.6 ft. from side lot line (**THE BOARD APPROVED THE ADDITION 5.6 FEET**). Located at 8808 Cromwell Dr. on approx. 13,125 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((5)) 181. (Def. For Dec. on 2/12/02) 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 26, 2002; 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 positioning of the dwelling on the lot is unusual.

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

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

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

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

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

1. This variance is approved for the location of an addition, shown on the plat prepared by George W.

Page 263 February 26, 2002, (Tape 1), GEORGE HAINES, VC 01-B-192, continued from Page 262

O'Quinn, dated May 22, 2001, revised through February 25, 2002, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hart and Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the public hearing.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 263 February 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BROYHILL CREST RECREATION CLUB, SPA 54-M-053 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 54-M-053 previously approved for a swim club to permit site modifications. Located at 7212 Early St. on approx. 2.47 ac. of land zoned R-3. Mason District. Tax Map 60-3 ((24)) 9B. (In association with SE 01-M-038). (Admin moved from 5/7/02)

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. Terrence Cooke, Agent, replied that it was.

Fran Burnszynski, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to a special permit to allow site modifications to an existing swim club. The modification would allow a 150-foot tall tree pole telecommunications facility and associated equipment. There were no additional buildings proposed with the application. A total of 36% open space would be provided on site with access to the site provided from Early Street to the northeast. Staff recommended approval subject to the development conditions dated February 7, 2002.

Mr. Hammack stated that he had stock with AT&T Wireless and he recused himself from the public hearing.

Mr. Cooke, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He presented an affidavit from Mr. Thorn, a property value assessment expert, indicating that the request would cause no adverse affect on the adjacent property owners. Mr. Cooke said the applicant met with the community and they were in support of the application. He said the pole would be designed to look like a pine tree. Mr. Cooke stated that no trees would be removed. He said they had received an approval recommendation from the Planning Commission.

Mr. Pammel asked what would be the frequency of the pole. Mr. Cooke replied 1850 to 1965 Mhz. Mr. Pammel asked would that frequency cause conflicts with the public safety frequencies. Mr. Cooke replied that it would not.

Mr. Hart asked how often maintenance people would be on site. Mr. Cooke replied approximately once a month for routine maintenance.

Vice Chairman Ribble called for speakers.

Page ~~264~~, February 26, 2002, (Tape 1), BROYHILL CREST RECREATION CLUB, SPA 54-M-053, continued from Page ~~263~~

Steve Hansen, 7314 Mason Hill Drive, came forward to speak in support of the application. He said the tower would look like a pine tree and would be screened by the current trees.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 54-M-053 for the reasons noted in the Resolution.

Mr. Pammel noted that this was the first monopole application with support from the community.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BROYHILL CREST RECREATION CLUB, SPA 54-M-053 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 54-M-053 previously approved for a swim club to permit site modifications. Located at 7212 Early St. on approx. 2.47 ac. of land zoned R-3. Mason District. Tax Map 60-3 ((24)) 9B. (In association with SE 01-M-038). (Admin moved from 5/7/02) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 26, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a special permit.
3. The applicant's choice of a tree pole helps to mitigate the visual impact on the surrounding area.
4. The site is heavily wooded and it will be very difficult to notice the monopole.
5. The absence of community opposition demonstrates how well the application has been thought out.
6. Having the monopole on site will help to financially maintain the swim club.

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 the Board of Zoning Appeals, and is the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit plat prepared by Scientech, Inc. which is dated July 5, 2001 as revised through January 3, 2002 and approved with the application, as qualified by these development conditions. The owner or a designee may apply for a Special Permit Amendment (SPA) without applying for a Special Exception Amendment (SEA) provided that the SPA is not deemed to impact the SEA.
3. A copy of this Special Permit and the Non-residential Use Permit SHALL BE POSTED in a conspicuous place on the property and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.



4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this Special Permit shall be in conformance with the approved Special Permit plat and these development conditions.
5. The maximum number of swim club employees on site at any one time shall be eight (8)
6. The maximum number of family memberships shall be 400.
7. Parking shall be provided on site as shown on the Special Permit plat; all parking shall be on site.
8. The regular hours of operation for the swimming pool shall be limited to 9:00 a.m. to 9:00 p.m. Swim team practices shall not begin before 8:00 a.m. League swim meets shall be conducted only on Saturdays and Mondays between Memorial Day and Labor Day. The hours of operation for the offices shall be limited to 7:30 a.m. to 9:30 p.m. Nighttime parties extending no later than midnight may be permitted up to six (6) times per season (Memorial Day to Labor Day) on Friday, Saturday or pre-federal holiday nights. The Zoning Administrator shall be notified in writing at least fifteen (15) days prior to the parties.
9. During discharge of swimming pool waters, the following operational procedures shall be implemented to the satisfaction of the Fairfax County Health Department:
  - 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 standards 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. To minimize the impact of the lights on adjacent properties, the lights shall be directed downward and shall be shielded to prevent glare on adjacent properties. Parking lot light shall not exceed twelve (12) feet in height.
11. The parking lot shall be repaired and re-stripped in accordance with the Public Facilities Manual, subject to the approval of DPWES.
12. The equipment cabinets and gates to the compound shall be kept locked and secured at all times except during maintenance or service.

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. A Non-Residential Use Permit (Non-RUP) shall be required to implement this special permit amendment approval for the existing use. 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. Hammack recused himself from the hearing, and Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6,

Page 266 February 26, 2002, (Tape 1), BROYHILL CREST RECREATION CLUB, SPA 54-M-053, continued from Page 265

2002. This date shall be deemed to be the final approval date of this special permit.

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Page 266 February 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, NO. VA. FRIENDS SCHOOL, SPA 99-P-036 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 99-P-036 previously approved for a church and related facilities to permit a private school of general education and a child care center. Located at 2854, 2858 and 2864 Hunter Mill Rd. on approx. 5.31 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 18A (formerly known as 17C and 18)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McBride, Agent, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment for a previously approved church and related facilities to permit a private school of general education with a child care center with before and after school care for its students. The school of general education was proposed to be located within the approved sanctuary/administrative and multi-purpose building, which was currently under construction. The private school of general education would be located within Phase I of the building that would encompass a multi-purpose hall, an administration wing and education wing. Phase II would house a new sanctuary which would be built at a later time. The total maximum daily enrollment for the proposed private school of general education was 176 students. The proposed hours of operation for the private school of general education were from 8:30 a.m. to 3:30 p.m., Monday through Friday. The applicants also proposed a child care center with before school care from 6:00 a.m. to 8:30 a.m. and after school care from 3:30 p.m. to 6:30 p.m., Monday through Friday. The child care center would only be used by the students attending the school. The private school of general education proposed to utilize an 18,570 square foot outdoor play area that was located west of the building. The play area would include the western part of the asphalt parking lot and would be fenced with gates to allow parking when not in use by the children. There were no layout changes from the previously approved special permit other than the addition of the play area and no additional construction was proposed beyond that approved in conjunction with SP 99-P-036.

Staff recommended approval of SPA 99-P-036. Mr. Bernal noted that LouAnn Hutchins from the Department of Transportation was present to answer questions from the Board.

Mr. Pammel asked if the applicant offered to submit a traffic analysis from an independent consultant. Mr. Bernal replied that a letter dated December 7, 2001, was received from Patton, Harris, Rust & Associates regarding what the applicant had submitted as their traffic study.

Mr. Pammel asked if the results of the study were acceptable and agreed to by the Department of Transportation. Ms. Hutchins, Department of Transportation, stated that what the applicant submitted was not an actual traffic study, but an educated opinion. She said the applicant did not provide any figures to work with, but just an opinion that everything would be fine.

Mr. McBride presented the request as outlined in the statement of justification submitted with the application. He said the request was to allow a joint use of a church facility. Mr. McBride stated that the expanded church facilities were approved in 1999 by the BZA and construction was currently underway. He said the use would not require any new building or parking construction on the site. He said the existing facilities would be adequate for the requested use. Mr. McBride said the only construction proposed was a small extension to the fence along Hunter Mill Road at the request of a neighbor. He said an outdoor play area would also be added and 23 evergreen trees would be added to screen the play area. Mr. McBride said the site was currently overparked. He said a turn lane would be added on site, but significant road improvements would be done by private developers. Mr. McBride submitted two revised development conditions. The first revision was to Condition #6, where after a meeting with the citizens, the applicant agreed to phasing the number of students over a six year period to make sure the road improvements were completed and traffic had adjusted to the road improvements. Mr. McBride said the revised condition would reflect that the applicant would have demonstrated that they had tried to mitigate the traffic impact as much

as possible. He said the second revision was to Condition #23 which would require the applicant to add 23 evergreens by the play area. Mr. McBride submitted a petition in support of the application.

Mr. Pammel stated that there was a substantial amount of traffic on Hunter Mill Road. Mr. McBride said the trips generated from the school would be a teaspoon in an ocean of traffic. He said most of the people coming and going would be on their normal commute route and they would not be significantly adding to the traffic conditions that already exist. Mr. McBride said that with the road improvements there would be no safety issues.

Ms. Gibb asked where the students would come from. Mr. McBride said the school would be the first private school in the area, and a large portion of students would come from people who use the road as commuters.

Mr. Hart noted a letter submitted in opposition relating to screening. Mr. McBride stated that additional trees would be added to that location.

Vice Chairman Ribble called for speakers.

Bill Flanagan, 3119 Windsong Drive; Kurt Borgman, 10003 Courthouse Road; and Shawn McDonald, 2729 Sutton Road, came forward to speak in support. The speakers stated that the school was needed because there were not enough schools in the area.

The following speakers came forward to speak in opposition: Bruce Bennett, Chairman, Hunter Mill Defense League, Andrea Boston, 10309 Mystic Meadow Way; Byron Siliezar, 10303 Mystic Meadow Way; Brian Methvin, 10307 Mystic Meadow Way; Shelley Deutch, 10506 Adel Road; Barbara Adams, 3008 Weber Place; Michael Calhoun, 10305 Mystic Meadow Way; Nancy McCurdy, 10300 Mystic Meadow Way; Rose Piccigallo, 10308 Mystic Meadow Way; and John Collins, 10312 Mystic Meadow Way.

The speakers expressed concerns relating to traffic congestion, lack of a traffic study, location problems, and buffering.

Mr. McBride stated in his rebuttal that the additional landscaping would be added later. He said the necessary road improvements would be made; however, the church could not fix the other traffic problems.

Mr. Hart asked if staff agreed with the revised conditions submitted by the applicant. Mr. Bernal replied yes.

Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve SPA 99-P-036 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, NO. VA. FRIENDS SCHOOL, SPA 99-P-036 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 99-P-036 previously approved for a church and related facilities to permit a private school of general education and a child care center. Located at 2854, 2858 and 2864 Hunter Mill Rd. on approx. 5.31 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 18A (formerly known as 17C and 18) 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 26, 2002; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s).3-103 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 Trustees of Unity of Fairfax Church of the Daily Word; Northern Virginia Friends School, and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared (2 sheets) by David H. Steigler, dated November 28, 2001, 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. Upon issuance of the Non-RUP, the number of seats in the sanctuary may increase from 250 to a maximum of 400.
6. Upon issuance of a Non-RUP for the multi-purpose/ administration building, the school and child care center may commence and the total maximum daily enrollment for the private school of general education shall be as shown below. There shall be a maximum staff of 27 employees on the property at any one time. The total maximum daily enrollment for the before and after school child care center shall be 35 students for the first two full years of operation and 70 students thereafter.

	Year	1	2	3	4	5	6+
Students		70	88	104	122	140	176

7. Upon issuance of the Non-RUP, the maximum hours of operation for the private school of general education shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday. The before school care shall be limited to 6:00 a.m. to 9:00 a.m. and the after school care shall be limited to 3:30 p.m. to 6:30 p.m. Monday through Friday. Only the students enrolled at the school of general education shall be permitted to attend the before and after school care.
8. The operator of the private school of general education shall designate a carpool coordinator to administer and encourage participation in a carpool program designed to reduce the number of vehicle trips to and from the school during rush hour periods.
9. The applicant shall construct an 8-foot wide sidewalk or trail along the full frontage of the property. The sidewalk/trail shall adjoin existing or proposed sidewalks to the north and south, to the satisfaction of DPWES.
10. The applicant shall construct an extended turn lane across the full frontage of the property, measuring a minimum 35 foot cross section from centerline to face of curb to create a second southbound vehicle travel lane, to the satisfaction of DPWES. With provision of these frontage

improvements by the applicant, dedication measuring a minimum of 45 feet of right-of-way shall be permitted if deemed appropriate by DPWES. If frontage improvements are not provided, a minimum dedication measuring 56 feet from centerline of Hunter Mill Road shall be provided. Right-of-way shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County, or at the time of site plan approval, whichever comes first.

11. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.
12. All existing and proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly on the subject property and shall be full cutoff lights.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
13. Stormwater management/BMP design satisfying all Public Facility Manual requirements shall be provided to the satisfaction of DPWES.
14. A tree preservation plan and final limits of clearing and grading shall be established in coordination with and subject to approval by the Urban Forestry Division of DPWES in order to preserve individual trees and stands of trees shown to be saved on the Special Permit Plat. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation may be implemented to the satisfaction of the Urban Forester. Activities may include, but are not limited to, increased tree protection measures, crown pruning, root pruning, mulching and fertilization. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any clearing and grading activities on the site, including the demolition of any existing structures.
15. Transitional screening and barrier requirements shall be modified in favor of that shown on the Special Permit Amendment Plat. Supplementation of existing vegetation within all transitional screening areas to achieve effective and viable year-around screening shall be as directed by the Urban Forester. In addition, twenty-three evergreen trees shall be added to those shown on the approved site plan No. 8226-SP-02-2, within the transitional screening area which lies between the play area shown on the SPA Plat and the Hunterbrooke subdivision. Size and species of plantings shall be as determined by the Urban Forester. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary.
16. The proposed six-foot high fence on the western property line shall be field located, in consultation with the Urban Forester, to minimize disturbance to existing trees which are designated on the Special Permit Amendment Plat to be preserved.
17. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site. No additional areas shall be cleared or created to accommodate parking spaces beyond that depicted on the Special Permit Amendment Plat.
18. Prior to site plan approval, the applicant shall show proof that the 15 foot outlet road and ingress/egress easement which bisects the application property shall be properly quitclaimed or relocated so as to not legally encumber conditions as proposed with this application, to the satisfaction of DPWES.

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 required Non-Residential Use Permit has been obtained. The Board of Zoning Appeals may, after a public hearing, 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 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 270 February 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN E. AND JANET A. KONYHA, SP 01-S-067 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 4.1 ft. from rear lot line. Located at 5502 West Ridge View Dr. on approx. 5.23 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-4 ((13)) 2A.

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. Gregory N. Harney, 6211 Old Keene Mill Court, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure, a pool house, to remain 4.1 feet from a rear lot line. A minimum rear yard requirement of 21 feet is required; therefore, a modification of 16.9 feet was requested.

Mr. Harney presented the request as outlined in the statement of justification submitted with the application. He said the structure was in harmony with the area and the property was heavily wooded. Mr. Harney said there would be no impact on the neighbors and the closest house was 134 feet from the subject property.

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

Mr. Hammack moved to approve SP 01-S-067 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARVIN E. AND JANET A. KONYHA, SP 01-S-067 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 4.1 ft. from rear lot line. Located at 5502 West Ridge View Dr. on approx. 5.23 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-4 ((13)) 2A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 26, 2002; 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 (detached pool house) as shown on the plat prepared by Charles J. Huntley, Jr., Land Surveyor, dated August 21, 2001, as revised through December 5, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained and approval of final inspection shall be obtained.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 271, February 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BALWANT S. GARCHA, SPA 93-M-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 4816 Montgomery St. on approx. 35,967 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((10)) 85. (Admin moved from 12/11/01 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. Scott J. Spooner, 1400 South Joy Street, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Jennifer Josiah. The applicant sought approval to permit the use of a one-story, 1,000 square foot attached accessory dwelling unit, within the existing 6,438 square foot home. In staff's evaluation there were no land use, transportation, or environmental issues associated with the request. Staff recommends approval of the accessory dwelling unit, subject to the development conditions contained the staff report.

Mr. Spooner presented the request as outlined in the statement of justification submitted with the application. He said the previous application was approved for 5 years and had expired, and the subject application was identical to the previous application.

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

Mr. Pammel moved to approve SPA 93-M-047 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BALWANT S. GARCHA, SPA 93-M-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 4816 Montgomery St. on approx. 35,967 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((10)) 85. (Admin moved from 12/11/01 for notices) 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 26, 2002; and

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

1. The applicant is the owner of the land.
2. The application was previously approved in 1993 and there have been no changes, but a request for an extension of the five year period.

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). 8-918 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, 4816 Montgomery Street (35.967 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 Price Consulting Engineers, dated June 18, 1993, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a



conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The accessory dwelling unit shall contain no more than one (1) bedroom.
5. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. There shall be four (4) driveway parking spaces provided on the site as shown on the special permit plat.
9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance, or the range shall be removed and the structure incorporated as part of the main dwelling unit.

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

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. LESTER H. SMALLWOOD, JR., SP 01-L-037 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 4.8 ft. from side lot line and to permit an accessory dwelling unit. Located at 6116 Pioneer Dr. on approx. 8,412 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 17. (Admin. moved from 8/21/01 for notices) (Deferred from 10/23/01) (Admin moved from ind. def. per appl req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lester Smallwood, 6116 Pioneer Drive, Springfield, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Jennifer Josiah. The applicant requested a special permit for a reduction in minimum yard requirements based on an error in building location to permit an addition to remain 4.8 feet from the north side lot line and to permit an accessory dwelling unit. The Ordinance at the time of the

construction required a minimum 5.0-foot side yard; therefore, a modification of 0.2 feet was requested for the existing addition. In staff's evaluation there were no land use, transportation, or environmental issues associated with this request. Staff recommended approval of the accessory dwelling unit, subject to the revised development conditions contained in the staff report addendum dated February 19, 2002. Ms. Langdon noted that the previously requested variance was no longer needed.

Mr. Smallwood presented the request as outlined in the statement of justification submitted with the application. He said the house was purchased in 1957 and the carport was enclosed in 1958 to allow for storage. Mr. Smallwood stated that in 1972 he added a 14-foot addition behind the carport. He said a second story was built and building permits were approved; however, the contractor went beyond the building envelope after being told not to do so. Mr. Smallwood discussed the problems he had with his previous architect.

Mr. Hammack said the drawings reflected a kitchen area already constructed. Mr. Smallwood replied that only the framework had been constructed, but there were no kitchen materials on the interior of the structure.

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

Mr. Hart moved to approve SP 01-L-037 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LESTER H. SMALLWOOD, JR., SP 01-L-037 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 4.8 ft. and 9.8 feet from side lot lines and to permit an accessory dwelling unit. Located at 6116 Pioneer Dr. on approx. 8,412 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 17. (Admin. moved from 8/21/01 for notices) (Deferred from 10/23/01) (Admin moved from ind. def. per appl req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 26, 2002; 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). 8-914 and 8-918 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, 6116 Pioneer Drive (8,412 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 Larry N. Scartz as revised by Charlie S. Choe, dated October 9, 2000, as revised through May 22, 2001, and approved with this application, as qualified by these

development conditions.

3. A copy of this Special Permit and the Residential Use Permit (RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than 2 bedrooms. The proposed den/study shall be utilized only for den/study type uses and shall not, at any time, be utilized as a bedroom.
6. There shall be two (2) garage parking spaces and two (2) driveway parking spaces provided on the site as shown on the special permit plat.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance, or the range shall be removed and the structure no longer used as an accessory dwelling unit.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. 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 4-1. Mr. Hammack voted against the motion. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 275, February 26, 2002, (Tape 1), Scheduled case of:

9:30 A.M. CLYDE W. PROFFITT, A 2001-LE-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is maintaining two dwelling units on property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 3122 Clayborne Ave. on approx. 16,816 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (5) 27. (Admin moved from 8/14/01) (Def. from 9/18/01) (Admin moved from 12/11/01)

Vice Chairman Ribble noted that A 2001-LE-014 had been administratively moved to May 21, 2002.

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Page 276, February 26, 2002, (Tape 1), After Agenda Item:

Approval of January 23, 2001, August 7, 2001 and September 18, 2001 (morning session) Minutes

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

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Page 276, February 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
J. Douglas and Carol Hertel, VC 92-B-100

Mr. Kelley moved to approve the Request for Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting. An additional 24 months was approved, and the new expiration date is December 16, 2003.

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Page 276, February 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Parkwood Baptist Church, SPA 84-A-048-3

Mr. Kelley moved to approve the Request for Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting. An additional 12 months was approved, and the new expiration date is December 16, 2002.

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Page 276, February 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Cub Run Baptist Church, SP 97-Y-029/VC 97-Y-058

Mr. Kelley moved to approve the Request for Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting. An additional 12 months was approved, and the new expiration date is February 12, 2003.

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Page 276, February 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Ellen R. Warren and James R. Noel, VC 99-V-061

Mr. Kelley moved to approve the Request for Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting. An additional 12 months was approved, and the new expiration date is February 12, 2003.

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Page 276, February 26, 2002, (Tape 1), After Agenda Item:

Approval of February 19, 2002, Resolutions

Mr. Hart moved to approve the Resolutions. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting.

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Page 277, February 26, 2002, (Tape 1), After Agenda Item:

Request for Intent to Defer  
A&R Foods, Inc. and Tower Group, L.L.C., A 2001-SU-046.

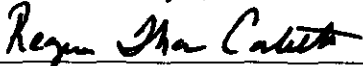
Mr. Kelley moved to approve the Intent to Defer. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote, and Chairman DiGiulian was absent from the meeting. The application was deferred to April 2, 2002, at 9:30 a.m.

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As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Minutes by: Regina Thorn Corbett

Approved on: July 9, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 5, 2002. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; and James Pammel. Chairman John DiGiulian and John Ribble were absent from the meeting.

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

Page 279, March 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF TEMPLE BAPTIST CHURCH, SPA 85-D-009-7 Appl. under Sect(s). 8-301 of the Zoning Ordinance to amend SP 85-D-009 previously approved for a church with child care center and a private school to permit building additions, site modifications, increase in enrollment and change in hours of operation. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2 ((1)) 7 and 7A.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor Pittman, 1545 Dranesville Road, Herndon, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to provide two additions, consisting of 9,161 square feet, which would require redesign of a portion of the parking area. They also requested an increase in enrollment for the school from 240 to 270 students and a slight increase in the school's hours of operation to permit the school to remain open until 3:30 p.m. Previously, the school was permitted to stay open until 3:15 p.m. Staff recommended approval of the application subject to the development conditions dated February 26, 2002.

Pastor Pittman presented the request as outlined in the statement of justification submitted with the application. He stated that on September 26, 2000, an approval was obtained to expand the auditorium, and the current request was not for an increase in the size of the auditorium. Pastor Pittman stated that they also requested a 10% increase in the student body. He said the neighbors were in support of the application. Pastor Pittman requested a waiver of the 8-day waiting period.

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

Mr. Pammel stated that the site was close to becoming maxed out, and he would not support any further expansions. Mr. Pammel moved to approve SPA 85-D-009-7 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF TEMPLE BAPTIST CHURCH, SPA 85-D-009-7 Appl. under Sect(s). 8-301 of the Zoning Ordinance to amend SP 85-D-009 previously approved for a church with child care center and a private school to permit building additions, site modifications, increase in enrollment and change in hours of operation. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2 ((1)) 7 and 7A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 2002; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-301 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Temple Baptist Church, and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated November 12, 2001, as revised through December 6, 2001 and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.
4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. With issuance of a Non-Residential Use Permit, the maximum seating capacity for the sanctuary shall be limited to 588.
6. With issuance of a Non-Residential Use Permit, the hours of operation of the child care center shall be limited to 6:00 A.M. to 6:00 P.M., Monday through Friday, and the hours of operation of the school of general education shall be limited to 8:00 A.M. to 3:30 P.M., Monday through Friday.
7. Parking spaces shall be provided in the location shown on the plat. All parking for the uses shall be on-site. Prior to issuance of a Non-Residential Use Permit, all interior and peripheral parking lot landscaping shall be maintained as required by the Ordinance, to the satisfaction of the Urban Forester.
8. All transitional screening planting shall be maintained to the satisfaction of the Urban Forester. Dead or dying plants shall be replaced with like-kind plantings, as needed, as directed by the Urban Forester. Transitional screening shall be provided in accordance with the following:

North

Along the northern lot line, the existing vegetation shall satisfy the transitional screening requirement, and shall be supplemented where necessary to replace screening lost due to construction of the building addition and parking lot, subject to the determination of the Urban Forester.

West

Along the western lot line, the existing vegetation shall satisfy transitional screening requirements.

9. The barrier requirement shall be waived along the north and west lot lines.
10. Upon issuance of the Non-Residential Use Permit for this Special Permit Amendment, the combined maximum daily enrollment of the child care center and school of general education shall not exceed 270. The number of students enrolled in the child care center and the school of general education



may fluctuate, but the maximum daily enrollment for the child care center shall not exceed 64 students.

11. A program to encourage and assist organization of student and employee car pools shall be instituted and maintained. School bus service shall be made available where routing is practically and financially feasible, as determined by the Temple Baptist Church.
12. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve feet.
  - The lights shall be of a design which focuses the light directly onto the subject property, shall be full cut-off lights, and shall not create glare or a nuisance off the property.
  - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
13. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
14. The structure noted on the plat to be a two-story dwelling, shall be used only for dwelling purposes for the pastor or employees of the church.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 281, March 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JAMES J. & MARY D. BRIODY, VC 01-P-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in front yards of a corner lot and to permit variance of sight distance requirements. Located at 10007 Oakton Crossing Ct. on approx. 17,266 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 5. (Deferred for decision only from 2/12/02)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, noted that the application had been deferred for decision only from February 12, 2002. She distributed a revised plat reflecting the fence being moved out of the sight distance triangle.

Ms. Strobel said at the previous public hearing the variance was comprised of two requests, one to vary the sight distance requirements at the corner of the intersection of Blake Lane and Hibbard Street. She said the other request was to allow a 6-foot high fence to remain, varying the 4-foot high requirement in a front yard. Ms. Strobel said there was a great deal of discussion with regard to the sight distance issue at that intersection. She said the applicants had since modified their request and modified the plat to remove the variance request regarding the sight distance issue. Ms. Strobel said a fence of 8 feet in height was permitted along Blake Lane, in accordance with Ordinance, because it was a major thoroughfare. She said they were not requesting a variance to the Ordinance requirements along Blake Lane; the only variance was to allow a fence 6 foot high to be permitted along Hibbard Street. Ms. Strobel said the fence was necessary in order to ensure privacy and security. She presented photographs to the Board.

Mr. Hart asked staff if the fence on Blake Lane could be 8 feet in height. Ms. Stanfield replied that was correct.

Mr. Pammel said he visited the sight, and notwithstanding the requirements of the Ordinance, he took some measurements. He said he went into the middle of the intersection on Hibbard Street and measured from the point where he could see a clear distance down Blake Lane. He said he was within two feet of the travel lane and that was not safe. Mr. Pammel said he did not care what the County standards reflected, more visibility was needed looking down the street before coming into the intersection. He said it would also cause a problem for those making a left turn off Blake Lane onto Hibbard. Mr. Pammel said he still did not like the position of the fence on the property line. He said he would prefer that the fence be moved in to be contiguous with the VEPCO right of way.

Ms. Strobel said she respected Mr. Pammel's comments; however, the applicant was not asking for any variance or modifications to County standards for the fence located on Blake Lane or at that intersection. She said the County had certain standards that they believed provided for a safe situation and they complied with those standards.

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

Mr. Hart moved to approve-in-part VC 01-P-193 for the reasons noted in the Resolution.

Mr. Pammel stated that he would reluctantly support the motion, but he still felt that the County should address the safety issues involved.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES J. & MARY D. BRIODY, VC 01-P-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in front yard of a corner lot and to permit variance of sight distance requirements. Located at 10007 Oakton Crossing Ct. on approx. 17,266 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 5. (Deferred for decision only from 2/12/02) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance in part with the required standards for a variance.
3. A 6-foot fence is appropriate because of the configuration of the lot.
4. The fence causes no significant impact on Hibbard Street.

5. The configuration of the fence on Blake Lane is done by-right.
6. In order to create a back yard on Hibbard Street, a 6 foot fence is needed.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 six foot high fence as shown on the plat prepared by Paul B. Johnson, dated November 16, 2001 as revised through March 1, 2002, submitted with this application and is not transferable to other land.

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

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 283, March 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. AN T. DAO, VC 01-P-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in a front yard of a corner lot. Located at 10009 Oakton

Crossing Ct. on approx. 17,215 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 4. (Deferred for decision only from 2/12/02)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Ms. Stanfield indicated that the application was deferred for decision only in conjunction with VC 01-P-193.

Ms. Strobel stated that the subject application was filed concurrently with VC 01-P-193 to permit a fence 6 feet in height to remain in a front yard of a corner lot. She said the fence was needed for screening and security. Ms. Strobel stated that there were no sight distance problems.

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

Ms. Gibb moved to approve VC 01-P-194 for the reasons noted in the Resolution.

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### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

AN T. DAO, VC 01-P-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in a front yard of a corner lot. Located at 10009 Oakton Crossing Ct. on approx. 17,215 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 4. (Deferred for decision only from 2/12/02)  
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 2002; 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 fence is set off the boundary line so that the impact on Hibbard Street is minimal.
4. The front yard is functionally the back yard for the applicant.

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

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

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

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

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

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

1. This variance is approved for the location of a six foot high fence as shown on the plat prepared by Paul B. Johnson, dated November 16, 2001, submitted with this application and is not transferable to other land.

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

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 285, March 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      PATRICK M. & ROBERTA F. DEWAR, VC 01-D-204 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 10014 Colvin Run Rd. on approx. 27,358 sq. ft. of land zoned R-1 and HD. Dranesville District. Tax Map 18-2 ((1)) 22 and 22A.

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. Patrick Dewar, 10014 Colvin Run Road, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance of Sect. 10-104 to permit the construction of an accessory structure (garage) to be located in the front yard of a lot containing 36,000 square feet or less.

Mr. Dewar presented the variance request as outlined in the statement of justification submitted with the application.

Mr. Hart asked if the request needed the approval of the Architectural Review Board (ARB) since this was in a historical district. Mr. Dewar replied yes, but that he received direction to proceed with the variance request first.

Mr. Hart asked if ARB approval needed to be noted in the development conditions. Susan Langdon, Chief, Special Permit and Variance Branch replied no.

Mr. Dewar submitted letters in support of the application.

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

Mr. Kelley moved to approve VC 01-D-204 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK M. & ROBERTA F. DEWAR, VC 01-D-204 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 10014 Colvin Run Rd. on approx. 27,358 sq. ft. of land zoned R-1 and HD. Dranesville District. Tax Map 18-2 ((1)) 22 and 22A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance as indicated in the statement of justification submitted with the application.
3. The position of the house on the lot makes it difficult to build elsewhere on the lot.

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (garage) as shown on the plat prepared by George M. O'Quinn, dated November 14, 2001, as revised through December 19, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 287, March 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SALAMEH BROTHERS CONSTRUCTION CO., VC 01-V-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 90.11 and proposed Lot 2 having a lot width of 75.18 ft. Located at 9111 Ox Rd. on approx. 2.73 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 29. (Moved from 2/5/02)

Vice Chairman Hammack indicated that the application was administratively moved to April 9, 2002.

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Page 287, March 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BECKFORD T. MACKEY, SPA 99-D-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 99-D-003 previously approved for an accessory dwelling unit to delete atrium. Located at 1014 Harriman St. on approx. 2.14 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((15)) 3. (Continued from 10/16/01 and 10/30/01)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Beckford Mackey, 1014 Harriman Street, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report addendum. On April 20, 1999, the BZA heard Special Permit SP 99-D-003 to permit construction of an accessory dwelling unit. Due to design concerns raised by a neighbor and a letter from the Great Falls Citizens Association that suggested that it would be desirable for the accessory dwelling unit to be attached to the principal structure, the BZA requested that the applicant attach the two units. On June 1, 1999, the BZA approved the special permit subject to a plat that depicted an "atrium" connecting the two structures. On July 19, 2001, the applicant filed Special Permit Amendment SPA 99-D-003 to delete the previously approved atrium. A public hearing was held on October 16, 2001, at which time the BZA requested that the applicant revise the request

to provide a connection between the main dwelling and the accessory dwelling unit. On February 21, 2002, staff received a revised plat for SPA 99-D-003. The revision dated through February 20, 2002, depicted a "breezeway" connecting the two structures rather than the previously approved atrium. Through an interpretation from Zoning Administration, an "atrium" is covered on all sides and is heated living space, while a breezeway does not have to be enclosed on the sides or heated.

Mr. Hart asked whether a breezeway would have a roof. Mr. Bernal replied yes.

Mr. Mackey stated that he did not know that it was a requirement to put a roof on the structure. He said he had received compliments from the neighbors.

Mr. Hart asked if the lattice was reinforced. Mr. Mackey replied yes, that the posts were anchored on the slab.

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

Mr. Pammel moved to approve-in-part SPA 99-D-003 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BECKFORD T. MACKEY, SPA 99-D-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 99-D-003 previously approved for an accessory dwelling unit to delete atrium. Located at 1014 Harriman St. on approx. 2.14 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((15)) 3. (Continued from 10/16/01 and 10/30/01) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 5, 2002; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this board, and is for the location indicated on the application, 1014 Harriman Street, 2.15 acres, and is not transferable to other land.
2. This Special Permit is approved for the purpose(s), structures and/or use(s) shown on the plat prepared by Reid M. Dudley, of Runyon, Dudley, Associates, Inc., January 7, 1999, as revised through February 15, 2002, submitted with this application and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.



Page 289, March 5, 2002, (Tape 1), BECKFORD T. MACKEY, SPA 99-D-003, continued from Page 288

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than 2 bedrooms.
6. There shall be 5 parking spaces provided on site as shown on the special permit plat.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from its final approval date and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. Should the property sell, the only use for the accessory dwelling unit is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance.
10. The connecting "breezeway" shall be roofed.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required 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 the 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. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 13, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 289, March 5, 2002, (Tape 1), Scheduled case of:

9:30 A.M.      A&R FOODS, INC. AND TOWER GROUP, LLC, A 2001-SU-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a fast food restaurant to occupy the property without a valid Non-Residential Use Permit in violation of Sect. 18-701 of the Zoning Ordinance. Located at 5906 Old Centreville Rd. on approx. 2.82 ac. of land zoned C-6 and HC. Sully District. Tax Map 54-4 ((5)) 2A. (Admin. moved from 3/12/02)

Vice Chairman Hammack noted that an Intent to Defer had been approved on February 26, 2002. Mr. Pammel moved to defer A 2001-SU-046 to April 2, 2002, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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Page 289, March 5, 2002, (Tape 1), Scheduled case of:

9:30 A.M.      DELANO CONTAINER SERVICES, INC., A 2001-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a recycling center without site plan approval or a Non-Residential Use Permit in violation of Zoning Ordinance

Page 290, March 5, 2002, (Tape 1), DELANO CONTAINER SERVICES, INC., A 2001-LE-001, continued from Page 289

provisions. Located at 5520 Vine St. on approx. 18,703 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 10. (moved from 4/24/01 and 8/7/01) (Deferred from 11/13/01)

Vice Chairman Hammack indicated that the appeal had been administratively moved to September 10, 2002 at 9:30 a.m.

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Page 290, March 5, 2002, (Tape 1), After Agenda Item:

Approval of August 14, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

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Page 290, March 5, 2002, (Tape 1), After Agenda Item:

Approval of February 26, 2002 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. 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 9:55 a.m.

Minutes by: Regina Thorn Corbett

Approved on: August 6, 2002

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 12, 2002. The following Board Members were present: Vice Chairman John Ribble, Nancy Gibb, Paul Hammack, James Hart, and James Pammel. Chairman John DiGiulian and Mr. Kelley were absent from the meeting.

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

Page 291, March 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. PAUL E. & LYNN T. HARDY, VC 01-B-205 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.0 ft. from side lot line. Located at 5300 Orchardson Ct. on approx. 18,432 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 615.

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. Paul Hardy, 5300 Orchardson Court, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought a variance to permit construction of an accessory storage shed to be located 1.0 foot from the side lot line. He said the Ordinance required a minimum of 8 feet from the side lot line; therefore, a variance of 7.0 feet was requested. He said that the proposed structure would be 12 feet in height.

Mr. Hardy presented the request as outlined in the statement of justification submitted with the application. He stated that the topography of the backyard was exceptional in that it had an extreme slope downward. He said there was not any other place for the shed due to the location of some large trees, and he wanted to put the shed on a flat area of the lot. Mr. Hardy stated that the large trees would make the shed less obtrusive. He said that he had a letter from the owners of the adjacent lot stated that they had no objections to the size or location of the shed.

Mr. Hart asked if Mr. Hardy had seen the letter of opposition from Mr. McGowan. Mr. Hardy replied that he had seen the letter and said that Mr. McGowan's concern was the color and height of the structure. Mr. Hardy stated that he agreed with the color issue and showed the color of stain he proposed to use, and he also did not have a problem lowering the shed to 10 feet.

Mr. Hart stated that he was concerned that the shed would be only 1.0 foot from the property line and asked if the shed could be moved over some. Mr. Hardy replied that there was a natural trail that ran through their backyard, past the proposed shed area and down the hill to the lake. He said if the shed were to be moved out any further, the path would be blocked.

Mr. Pammel stated that he was concerned that the shed was too close to the property line, and he thought that Mr. Hardy needed to be at least 5 feet from the property line for the maintenance of the shed. He said he had seen the letter from the adjacent property owners who had no objections to the proximity of the shed. Mr. Pammel stated his concern was that eventually the neighbors would sell their house, and new neighbors may find the shed too close. He stated he felt that Mr. Hardy had substantial room on his lot to move the shed away from the property line.

Mr. Hardy stated in his rebuttal that due to the slope of the land, there was not as much room as there appeared to be. He stated he wanted to be flexible, but felt the additional five feet would not be necessary.

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

Matthew Hardy, 5300 Orchardson Court, Fairfax, came forward to speak in support of the application. He stated that their family had a lot bikes, lawn mowers, etc. and they needed the space for storage. He stated that moving the shed would block the natural path and change the view.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to deny VC 01-B-205 for the reasons noted in the Resolution.

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

PAUL E. & LYNN T. HARDY, VC 01-B-205 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.0 ft. from side lot line. Located at 5300 Orchardson Ct. on approx. 18,432 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 615. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 12, 2002; and

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

1. The applicants are the owners of the land.
2. The land has some topographical issues; however, the size of the lot would allow possible alternative locations for the shed.
3. The specific location of the shed would be a convenience for the applicant and should not be permitted by a variance.
4. The applicants have not satisfied the nine required standards 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.

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

Mr. Pammel seconded the motion, which failed by a vote of 3-2\*. Ms. Gibb and Mr. Hart did not support the motion. Mr. Pammel made a motion to waive the 12-month waiting period for refiling an application. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

\*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a variance.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 20, 2002.

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Page 293, March 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 01-M-206 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.9 ft. and 8.0 ft. from side lot lines. Located at 6447 Holyoke Dr. on approx. 9,367 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 30.

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. Lori Greenlief, Agent, 14368 Nandina Court, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought a variance to permit construction of an addition to be located 13.9 feet from the southern side lot line and 8.0 feet from the northern side lot line. He said the Ordinance required a minimum of 15 feet; therefore, variances of 1.1 feet from the southern lot line and 7.9 feet from the northern lot line were requested.

Mr. Bernal stated that the existing accessory structure located on the site was not in conformance with the required side or rear yard requirements and was therefore subject to a special permit for error in building location. He said the applicant had submitted an application for a special permit that was scheduled for hearing on May 7, 2002.

Ms. Greenlief presented the request as outlined in the statement of justification submitted with the application. She briefly reviewed the unique program that the Lincolnia Educational Foundation provided for special needs students.

Ms. Greenlief stated that there was an existing structure on the lot that could be salvaged by the students, and they had proposed to place an addition onto the dwelling in order to bring it up to the standards of the other houses on the street. She said that although the lot was exceptionally narrow, it had been bought in good faith for the purpose of the program.

Ms. Greenlief stated that the house was plated prior to the first Zoning Ordinance and did not meet current standards for lot area or width. She said the proposed addition would not go any closer to the side lot lines than the existing dwelling. She stated that strict application of the Ordinance would produce undue hardship and there was no other area on the lot to place an addition while meeting the yard requirements of the current Ordinance.

Ms. Greenlief stated that there had been nine other similar variances granted on this street, ranging from 8 feet to 11 feet from the side lot lines. She said the variance would not be a detriment to adjacent properties and neither neighbor objected to the application.

Ms. Greenlief addressed development condition 4 in the Staff Report, regarding the existing cinderblock garage on the back of the property. She said development condition 4 stated that a building permit would not be issued for the addition until a special permit was approved or the garage removed.

Ms. Greenlief stated she met with Mike Congleton, Zoning Enforcement Branch, who was in charge of approving a portion of the zoning and building permits. She said she specifically asked if it would be necessary for the students to stop work on the house pending the special permit hearing. She said he replied that since the special permit was for an error application for a separate building, they would not need to stop.

Ms. Greenlief asked the Board to change development condition 4 to be worded differently so that work could continue. She also asked the Board, if they were in favor of granting the variance, to please waive the eight-day waiting period.

Mr. Hart asked Susan Langdon, Chief, Special Permit and Variance Branch, if staff had a problem with the change of development condition 4. She replied that the applicant had been asked several times to file for a special permit so that the two cases could be heard concurrently but the special permit had been filed later. She stated that she believed the special permit for the garage should still be part of the development conditions.

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

Mr. Pammel suggested a modification in development condition 1 to add the additional wording, "This variance is approved for the location of an addition to the existing dwelling as shown on the plat etc." He stated he also felt development condition 4 was irrelevant to this application and proposed the deletion of it.

Mr. Pammel made a motion to approve VC 01-M-206 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 01-M-206 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 13.9 ft. and 8.0 ft. from side lot lines. Located at 6447 Holyoke Dr. on approx. 9,367 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 30. 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 12, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is exceptionally narrow.
3. The structure is already existing on the lot.
4. The proposed addition will not encroach into the side lot lines any further than the dwelling that presently exists on the property.

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

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

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of an addition to the existing dwelling as shown on the plat prepared by George M. O'Quinn, November 21, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb and Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 12, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 296 March 12, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE DOLL COMPANY, VC 01-L-199 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 15.0 ft. and to permit construction of a 6.0 ft. high fence in the front yard. Located at 6001 South Van Dorn St. on approx. 35,557 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 39. (Continued from 2/19/02)

Vice Chairman Ribble stated there had been a deferral request for VC 01-L-199.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Planning Commission (PC) had been scheduled to hear the case the prior week, however the applicant had requested a deferral. She said the PC case had been deferred until April 4, 2002, therefore, the applicant had requested that this case be deferred until April 16, 2002.

Mr. Pammel made a motion to defer VC 01-L-199 until April 16, 2002 at 9:00 a.m., which carried with a 5-0 vote. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 296 March 12, 2002, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT C. AND MARY A. COLE, A 2001-PR-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are operating a retail sales establishment on property in the R-1 District which is not a permitted use under Zoning Ordinance provisions. Located at 7129 Leesburg Pi. on approx. 2.20 ac. of land zoned R-1. Providence District. Tax Map 40-3 ((1)) 99.

9:30 A.M. ROBERT C. AND MARY A. COLE, A 2001-PR-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are operating a plant nursery without site plan approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 7125 Leesburg Pi. on approx. 37,207 sq. ft. of land zoned C-8. Providence District. Tax Map 40-3 ((1)) 102.

Vice Chairman Ribble called the applicant to the podium and asked him to state his name.

David Lasso, Agent, Venable, Baetjer & Howard, 2010 Corporate Ridge Drive, Suite 400, McLean, Virginia stated he represented the appellants.

Daryl Varney, Assistant to the Zoning Administrator, made staff's presentation as contained in the staff report. He stated the appellants were given a notice of violation for operating a retail plant nursery without site plan approval and without a Non-Residential Use Permit (Non-RUP). He stated that they were also in violation of running a retail sales establishment on property that was not permitted in the R-1 district.

Mr. Varney stated that in October 2001, a Zoning investigation revealed that the appellants had been issued a similar notice of violation in 1981. He said the violation in 1981 had been cleared with a temporary site plan waiver that expired in 1983 and there was not a record of any site plan approvals since then. He stated that the appellants were in violation of Par. 2, Sect. 17-103 of the Zoning Ordinance.

Mr. Varney stated that a Non-Rup had been approved in August 1982 to permit a fruit and vegetable stand on the property. He said that a note on the Non-Rup stated that it expired on the same date as the site plan waiver and there had been no subsequent Non-Rups issued for this site; therefore, the appellants were also in violation of Sect. 18-701 of the Zoning Ordinance.

Mr. Varney stated that zoning inspection had been done on October 16, 2001 and revealed that the appellants were displaying and selling lawn statues, garden and patio furniture, fountains, birdbaths, pots, planters and other similar items on the northern portion of the property.

Mr. Varney defined a retail sales establishment and plant nursery per the Zoning Ordinance. He said the original zoning complaint stated that the plant nursery on Lot 102 had expanded onto Lot 99, but upon further inspection, it was determined that the use was that of a retail sales establishment. He said the appellants



Page 297, March 12, 2002, (Tape 1), ROBERT C. AND MARY A. COLE, A 2001-PR-049 and ROBERT C. AND MARY A. COLE, A 2001-PR-048, continued from Page 296

were in violation of Par. 5, Sect. 2-302 of the Zoning Ordinance that prohibited any use in the zoning district that was not permitted by the regulations for that district.

Ms. Gibb asked Mr. Varney about other gardening establishments that had been proposed. Mr. Shoup replied that a recent amendment to the Zoning Ordinance pertaining to plant nurseries had eased up on the restrictions of the items that could be sold, mainly man-made items. He said the problem had been with Lot 99 which had been predominantly used for the display and sales of statuary and lawn ornaments.

Mr. Shoup stated that the only way those items could be sold at a plant nursery was as a minor accessory use to the overall plant nursery operation. He said the sale of these items could only be approved by the Board of Supervisors in a Special Exception Application.

Mr. Hart clarified that the problem for many years had been the sale of man-made objects, and that the recent amendment allowed special exception conditions to permit the sale of man-made objects as a part of a special exception plant nursery. He stated that because the largest lot was in an R district, the Coles still would need a special exception to sell the statuary on the other lot. Mr. Varney replied that was correct, that the plant nursery was only allowed in the R-1 by special exception, so the appellants had to get a special exception.

Using the overhead viewgraph, the zoning staff identified and clarified for the Board various photographs and angles of Lot 99 and Lot 102.

Mr. Pammel stated he looked at the property and could not tell where the property lines were located. He said he noticed that Lot 101 also seemed to be involved as well with the overflow of their material.

Mr. Varney stated that he did not believe that Lot 101 had been involved in the plant nursery operation, only Lot 102 and Lot 99. Paul McAdams, Zoning Inspector, stated there had been some statues on Lot 101 in October, but Mr. Cole assured him everything would be moved off that lot. Mr. McAdams stated that he originally was going to give a violation to Lot 101, but he determined it had been a spillover and Mr. Cole had taken care of it.

Mr. Lasso stated that they had also prepared photos to show on the overhead viewgraph. It also contains statements of the owner of Lot 99 who is now 88 years old, Edwin Shibe, who will state that his house and his property was used as a nursery since 1962 and before that time. Also there will be a statement orally from Pauline Taylor, who is present, about 40 years of both lots being used as a nursery.

Mr. Lasso gave each Board member a booklet of photos and locator maps. He then identified and clarified for the Board various photographs and angles of Lot 99 and Lot 102.

Mr. Lasso stated that this business had been in operation since the early 1960's, and there had not been a requirement for a site plan for the C-8 zoning district at that time. He stated that Mr. Cole sought a Non-Rup in 1977, and first time the County brought up the issue of a site plan was in 1982. He said at that time, the County presented Mr. Cole with a waiver for the site plan, which he signed and a site plan had never been addressed or filed.

Mr. Lasso stated that a new violation had been brought forth and the fact that a site plan was never required it seemed that no purpose would be served by obtaining one at this time. He stated that Mr. Cole's Non-Rup was still currently viable without a site plan.

Mr. Lasso stated that the appellants had not been aware of the problem with the patio furniture and agreed to remove it as soon as possible.

Mr. Hammack asked when Mr. Cole obtained his first business license to operate under the name of Sam's. Mr. Lasso replied that it was believed to be in 1976 before the new zoning codes were initiated and he had continued to operate the business under that name since then.

Mr. Hammack asked if Mr. Cole had been operating Sam's since 1976 as an on-going business. Mr. Lasso replied that was correct, and that was the time of the name change. Mr. Lasso stated that Mr. Cole

Page 298 March 12, 2002, (Tape 1), ROBERT C. AND MARY A. COLE, A 2001-PR-049 and ROBERT C. AND MARY A. COLE, A 2001-PR-048, continued from Page 297

purchased the business from Mr. Sewell in 1976, and later, when Mr. Shibe prepared to close his nursery business, Mr. Cole had been able to buy that also. He said both of the purchases had been legal transactions.

Mr. Hammack asked if Mr. Cole had actually purchased the business as an ongoing business from Mr. Sewell and Shibe and how he had managed to obtain both businesses.

Robert Cole, 731 Gordons Road, Falls Church, Virginia, came forward to speak. He gave a detailed history of his purchase and acquisitions for both businesses.

Mr. Hammack asked Mr. Cole why he did not more aggressively pursue site plan approval in 1977. Mr. Cole explained that he was a farmer and grower of plants and he believed he had taken care of everything. Mr. Cole said he had always cooperated with the Zoning Enforcement Branch and had always done everything they had asked him to.

Mr. Hammack asked Mr. Cole if he understood that the Non-Rup that had been issued to him had a termination date, the same date as the site plan waiver that expired in 1983. Mr. Cole said he could not really recall that far back.

Mr. Lasso stated that the real issue was whether or not the nursery had been in operation and whether it could continue on the residential lot without special exception. He said that there should not be any question about that issue now. He asked if the appellant needed to apply for a special exception simply to sell statutory. He stated that if a nursery had legally been operated before, and the fact that the code now recognized it as an accessory use to the nursery that had already been in place, that it was actually a lawful operation.

Mr. Lasso stated that he wanted it to be very clear that the nursery had been in operation since 1962, and it had been used as a commercial lot since the early 1960's. He said the Non-Rup had been issued to Mr. Cole in May, 1977. He said that a notation for a site plan was not made on the Non-Rup until almost five years later, and there was no explanation as to why it was allowed to lapse.

Mr. Lasso stated that by issuing a waiver to Mr. Cole, the County could not change a substitutive provision of the Zoning Code. He said the County could not go back and change the law that recognized the non-conforming status of a nursery that began in 1962 without a site plan and had been allowed to continue until now. He said that just because someone made a mistake and asked for a site plan in the past, and then failed to pursue it for twenty years was not a reason to change the code and site the appellants to be in violation of not having a site plan now.

Mr. Lasso said the C-8 lot should be not have a Non-Rup and the condition should be removed and business be allowed to continue as it had for forty years. He stated that on the residentially zoned property the appellants ought to be allowed to sell statutory without a special exception being issued. He said If one was required, it was only required for the sale of the statutory and not for the underlying use, which was the operation of the nursery, which had run continuously since 1962.

Mr. Hart asked when the sales of the statutory began. Mr. Cole replied that was something that he started around 1978, but had always sold pots and birdbaths.

Vice Chairman Ribble asked if there was anyone to speak in support of the appeal.

The following people came forth to speak in support of the application: Pauline Taylor, Bill Manchew, William C. Caldwell, Larry Sexton, John Feist, Jack Cole, Carol Dexter and David Dexter. They stated in general that the Coles had been good neighbors; they were a refreshingly good small business in a big business world; they improved the neighborhood; they offered a colorful and panoramic view along with a piece of history; they kept money in Fairfax County; they worked well with the residents of the area; and represented many pleasant memories to the people that had been going there for a long time.

Mr. Hart asked what was the operative date for the commercial lot.

Page 299, March 12, 2002, (Tape 1), ROBERT C. AND MARY A. COLE, A 2001-PR-049 and ROBERT C. AND MARY A. COLE, A 2001-PR-048, continued from Page 298

Mr. Varney stated that the operative date would have been in 1959. He said there had been site plan requirements for uses permitted in commercial districts in the 1959 Ordinance, but when the property was rezoned in 1964 it had a single family detached dwelling on it. He said there was no mention in the re-zoning file about the land being used as a nursery or plant stand. He said the plant stand first appeared in the 1970 aerial photographs, and there had been a requirement for that type of use in 1970 as well as 1964.

Mr. Lasso stated in his rebuttal that Lot 102 was zoned residential in 1959 and was not re-zoned to commercial until 1964. He said the use as a nursery began when the property was zoned residential, it was a permitted use, and no site plan had been required. Mr. Lasso and Mr. Varney briefly discussed previous violations by the appellants, but agreed that they had been cleared through compliance by Mr. Cole

Mr. Hart asked for a file on the 1964 rezoning. Mr. Varney stated that it would probably be available on microfiche. Mr. Hart said he would like to see those papers, and read the booklet which had been handed out by Mr. Lasso.

Mr. Hart made a motion to defer the case until April 23, 2002 at 9:30 a.m. Ms. Gibb seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

Mr. Hammack asked if staff could verify whether or not the previous business owners had business licenses. Ms. Shoup replied his office would try and find that information.

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Page 299, March 12, 2002, (Tape 2), After Agenda Items:  
Approval of March 5, 2002 Resolutions

Mr. Pammel made a motion to approve the Resolutions. Ms. Gibb seconded the motion, which carried with a 5-0 vote. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Vice Chairman Ribble asked Mr. Hart to present to the Board any information that Mr. Hart, Mr. Pammel, and Ms. Langdon brought back after attending the meeting of the Residential Criteria Committee of the Planning Commission (PC).

Mr. Hart stated that the PC invited the BZA to submit language or specific suggestions on a number of topics.

Mr. Hart stated they had reviewed a number of difficult cases that had been heard by the BZA and learned that the PC intended to revise some of the regulations for PDH districts. He said the PC had asked for specific suggestions regarding language, about either the wording of the Residential Development Criteria or specific proffers/development conditions. He said that they would like detailed information on topics such as providing adequate space for maintenance of structures, conditions concerning setbacks or setback lines, whether a ladder could be put up against a structure. He said they wanted to know the kind of things that had forestalled any of the cases that the BZA may have dealt with.

There was a discussion among the Board about whether more information ought to be provided on the submissions of applications in the P-districts, such as footprints of the houses, decks, or sunrooms. They also discussed whether homeowners should have to make any disclosures about the restrictions on additions that should be given to prospective purchasers.

Mr. Hart said the meeting went well, and the PC was interested in hearing our suggestions. He said he thought the Board would like to follow up, even if it could not get exact wording. He said there were all kinds of issues that needed to be looked at.

Mr. Pammel stated that the committee had an illustration of a triple stacking that had created many difficult problems for the BZA. He said they had indicated some reservations with respect to the PC permitting that type of configuration because it did create problems for the Board and the people on the triple stacking lots.

Mr. Pammel stated that they basically wanted the Board to formulate language that would go into their proposed changes. He said he and Mr. Hart would get some information together to submit to the rest of the Board, and discuss as an after agenda item after a future meeting.

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Mr. Hart stated that both houses of the General Assembly had passed a statute that dealt with the composition of Boards of Zoning Appeals which would amend an existing local statute option for alternates which allowed counties to have up to three alternates who would vote on cases, not only for absentee votes, but abstaining or recusing.

Mr. Pammel stated that the issue may have resulted from Boards that were smaller than Fairfax. He said that several years ago Fairfax had been allowed only 5 people, and were then allowed 7 people to address that particular issue.

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

Minutes by: Judith A. Gobbi

Approved on: September 17, 2002

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John P. DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 19, 2002. The following Board Members were present: John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; James Pammel and John Ribble. Robert Kelley was absent from the meeting.

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

Page 301, March 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES SOPER & KAREN QUINN, VC 02-M-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain and construction of fence greater than 4.0 ft. in height in front yard. Located at 6611 Columbia Pi. on approx. 20,730 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((1)) 31.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that VC 02-M-002 had been administratively moved.

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Page 301, March 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CARROLL A. MCCARTHY, SP 01-B-070 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.7 ft. from rear lot line. Located at 4796 Tapestry Dr. on approx. 9,771 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-2 ((5)) 1677.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carroll McCarthy, 4769 Tapestry Drive, Fairfax, Virginia, replied that it was. Ms. McCarthy noted that her husband would give the presentation.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure, approximately 9.0 feet in height, to remain 4.7 feet from the rear lot line. The minimum rear yard requirement is 9.0 feet; therefore, a modification of 4.3 feet was requested. Staff noted that an administrative reduction was granted for the side yard, as the location of the accessory structure did not exceed 10% of the distance to the lot line.

Mr. McCarthy presented the special permit request as outlined in the statement of justification submitted with the application. He said the rear yard was shallow with exceptional topographical conditions. Mr. McCarthy stated that the shed was at the bottom of the hill and moving it would required grading. He said if the shed was moved it would render the yard unusable. Mr. McCarthy said the structure was surrounded by trees. He presented letters from the homeowners' association in support of the application.

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

Mr. Hammack moved to approve SP 01-B-070 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARROLL A. MCCARTHY, SP 01-B-070 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.7 ft. from rear lot line. Located at 4796 Tapestry Dr. on approx. 9,771 sq. ft. of land zoned R-3

(Cluster). Braddock District. Tax Map 68-2 ((5)) 1677. 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 19, 2002; 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 storage shed as shown on the plat prepared by Brian W. Smith, Land Surveyor, dated November 7, 2001, as revised through December 18, 2001, as submitted with this application and is not transferable to other land.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Ms. Gibb abstained from the vote, and Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 27, 2002. This date shall be deemed to be the final approval date of this special permit. //

9:00 A.M. ANDRE & SERENA P. CHREKY, SP 01-D-068 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and to permit an accessory dwelling unit. Located at 548 River Bend Rd. on approx. 2.48 ac. of land zoned R-E. Dranesville District. Tax Map 13-2 ((4)) 1B. (Admin. moved from 3/12/02).

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

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure, consisting of a four car garage and a 1,250 square foot apartment, to remain 7.7 feet from a side lot line. A minimum side yard of 20.0 feet is required; therefore, a modification of 12.3 feet was requested for the location of the accessory structure. The applicants also requested approval for an accessory dwelling unit for the apartment located above the garage. Staff recommended approval of the accessory dwelling unit subject to the Proposed Development Conditions dated March 12, 2002.

Mr. Bankert presented the requests as outlined in the statement of justification submitted with the application. He said the applicants built the garage with an apartment on top for Ms. Chreky's parents. Mr. Bankert stated that the applicants retained an architect and they thought that the necessary permits had been issued. He said they learned that the apartment and garage did not meet the requirements when they were making improvements to the house. Mr. Bankert stated that the only alternative would be to remove the garage, which would cost approximately \$100,000. He submitted a letter of support from an adjacent neighbor.

Mr. Pammel asked whether there was a resolution regarding the fence. Mr. Bankert stated that the neighbor had no difficulties with the fence, so nothing had been done.

Chairman DiGiulian called for speakers.

Moirette Lucas, adjoining property owner, came forward to speak in support. She stated that there was no visual impact.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 01-D-068 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDRE & SERENA P. CHREKY, SP 01-D-068 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and to permit an accessory dwelling unit. Located at 548 River Bend Rd. on approx. 2.48 ac. of land zoned R-E. Dranesville District. Tax Map 13-2 ((4)) 1B. (Admin. moved from 3/12/02). 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 13, 2002; 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 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). 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, 548 River Bend Road (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 David R. Wheeling, dated November 30, 2001, revised through February 28, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than 2 bedrooms.
6. There shall be 4 parking spaces provided on the site as shown on the special permit plat.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance, or the range shall be removed and the structure no longer used as an accessory dwelling unit.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 27, 2002. This date shall be deemed to be the final approval date of this special permit.



Page 305 March 19, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE WASHINGTON EDEN KOREAN PRESBYTERIAN CHURCH, SP 01-Y-069 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a place of worship with a child care center. Located at 15117, 15121 & 15113 Lee Hwy. and 6611 Cedar Spring Rd. on approx. 11.27 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 1, 2 and 2A and 64-2 ((3)) 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. John McBride, Agent, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the construction of a church and childcare center with a total of 60 children. The proposed church, which would be constructed in two phases, would consist of a 44,600 square foot building with a total of 700 seats and 243 parking spaces and a corresponding Floor Area Ratio of .09. Access to the site was proposed via Cedar Spring Road and Lee Highway. The Lee Highway access would be right-in/right-out only. Ms. Stanfield stated that revised proposed development conditions were distributed which reflected staff's response to changes requested by the applicant subsequent to publication of the staff report. She said staff concurred with the changes proposed and incorporated the proposed changes into the revised proposed development conditions. However, staff believed that Condition # 12, which specified that the limits of clearing and grading shall be no greater than that shown on the special permit plat and which also contained a requirement that in no event shall any area on the site be left denuded for a period of 14 days should be retained as originally proposed. Staff recommended approval subject to the approval of the revised proposed development conditions dated March 19, 2002.

Mr. McBride, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He submitted petitions in support of the application. Mr. McBride stated that Condition #12 was the only condition on which the staff and the applicant did not agree. He said they were concerned with the first sentence of Condition #12 because it did not add anything to the application, but would potentially cause a problem at site plan review. Mr. McBride stated that if that sentence were removed, the standard of review for a Department of Public Works and Environmental Services (DPWES) plan reviewer at site plan, would be substantial conformance to the special permit plat. He said the issue was the limits of clearing and grading shown on the special permit plat. Mr. McBride stated that all of the grading calculations and topography had not been done, as would be done on a site plan. He said keeping the first sentence in Condition #12 could be construed by a plan reviewer as mandating them to allow no deviation from the limits of clearing and grading. Mr. McBride stated that the last sentence of Condition #12 was not enforceable, he said the concern was that the BZA would be establishing new standards that the DPWES site plan reviewers would have to adhere to and he wasn't sure that they didn't conflict or were meaningless standards based upon the County's existing process and standard. Mr. McBride asked that the BZA delete the first and last sentences of Condition #12.

Mr. Hart asked staff what would the Public Facilities Manual (PFM) require if the sentences were removed. Ms. Stanfield stated that there was language on stabilization but not for a specified period of time. Mr. Hart asked where the 14 day limitation come from. Susan Langdon, Chief, Special Permit and Variance Branch, stated that condition was used consistently by staff in the R-C District and was reviewed by DPWES. She said rye grass would usually come up between 5 to 7 days and they thought that this was a good compromise in the R-C District to make sure there was stabilization. Chairman DiGiulian called for speakers.

Susan Needham, 6620 Cedar Spring Road, came forward to speak in opposition. She stated that there would be a significant increase in traffic. Ms. Needham stated that 90% of the trees would be removed. She said the use was not harmonious with the neighborhood.

Mr. McBride stated in his rebuttal that the use was harmonious if appropriately conditioned to residential uses. He said that is the location to place churches. Mr. McBride said it was appropriate to locate churches along arterial roads. He said church traffic would not impact the neighbors and the throat of Cedar Spring Road would be widened which makes that area safer.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that RC Districts were historically difficult areas to develop and the previous application was denied by the BZA. He said with the proposed configuration, the application was substantially improved. Mr. Hart said historically in Fairfax County there were many parts where there were places of worship integrated into a residential neighborhood and those were quite compatible with residential areas and the impact on the surrounding community could be mitigated with appropriate development conditions.

Mr. Hart moved to approve SP 01-Y-069 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE WASHINGTON EDEN KOREAN PRESBYTERIAN CHURCH, SP 01-Y-069 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a place of worship with a child care center. Located at 15117, 15121 & 15113 Lee Hwy. and 6611 Cedar Spring Rd. on approx. 11.27 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 1, 2 and 2A and 64-2 ((3)) 21. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 2002; and

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

1. The applicant is the owner of the land.
2. The impact on the water quality in this environmentally sensitive area has been addressed.
3. By adding a left turn lane, the application allows for increased safety for traffic entering and exiting Cedar Spring Road.
4. There will not be conflicting traffic between the church use and the homes in the neighborhood because the entrance is much closer to Lee Highway than was represented in the previous application.
5. The use is oriented to an arterial Lee Highway as recommended by the Comprehensive Plan.
6. There is a positive staff recommendation of the application and the use 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 Sect(s). 8-301 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William M. Robson, dated October 24, 2001, as revised through February 18, 2002, 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 to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance. In the event a waiver of service drive dedication and construction is not granted by DPWES, development of the site shall be in substantial conformance with the plat attached hereto as Exhibit A. Notwithstanding that which is shown on Exhibit A, transitional screening Type 1 shall be provided along the site's frontage and shall consist of twenty-five (25) feet of a mixture of evergreen and deciduous trees, while allowing some areas through which the church may be viewed from Lee Highway, subject to review and approval of the Urban Forestry Division of DPWES.
5. The maximum number of seats in the principal place of worship shall be 700.
6. The maximum total daily enrollment for the child care center shall not exceed 60 children.
7. Hours of operation for the child care center shall be a maximum of 6:45 a.m. to 6:45 p.m., Monday through Friday.
8. All parking shall be on site, as depicted on the Special Permit Plat.
9. Transitional screening shall be provided as follows:
  - Transitional Screening 1 shall be provided along the northwestern and northeastern lot lines, and on the west side of the proposed stormwater management pond, as specified in Article 13 of the Fairfax County Zoning Ordinance and subject to review and approval by the Urban Forestry Division of DPWES.
  - Existing vegetation shall be preserved, as depicted on the Special Permit Plat, along the remainder of the western and eastern lot lines and shall satisfy the transitional screening requirements.
  - Existing vegetation shall be preserved along the northern lot line as depicted on the Special Permit Plat. Additionally, notwithstanding what is shown on the plat, every effort shall be made to preserve some of the existing vegetation in the middle area of the northern lot line. In consultation with the Urban Forester, the applicant shall designate individual trees to preserve while allowing some areas through which the church may be viewed from Lee Highway. Any supplemental vegetation added to this area shall be flowering deciduous trees compatible with the existing evergreen trees.
  - The southern lot line adjacent to Lot Tax Map # 64-2((2)) 3 shall be supplemented with evergreen and flowering trees in the area between the parking lot and the limits of clearing and grading.
10. The barrier requirement shall be waived.
11. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
12. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for construction, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of

the site in which work will be continuous beyond 14 days.

13. The applicant shall make every effort to increase the amount of undisturbed open space to 50%, through a combination of strategies including, but not limited to, reduction in the limits of clearing and grading and size of the stormwater management facilities, and increasing the amount of tree preservation, where possible. The emergency turn-around provided at the eastern terminus of the Phase 2 parking area ("Parking Area C") shall be eliminated or reduced, if permitted by the Fire Marshal, and the existing vegetation preservation area enlarged.
14. Any proposed lighting of the parking lot areas shall be in accordance with the following:
  - The combined height of the light standard and fixtures shall not exceed a maximum of twelve (12) feet.
  - The lights shall be low intensity design, full-cut-off fixtures, which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the site.
15. Stormwater management/Best Management Practices facilities shall be provided as depicted on the Special Permit Amendment Plat or as determined by DPWES, provided, however, that such facilities shall be reduced or eliminated if alternative methods can be utilized throughout the site to mitigate water runoff and to restore water quality and no additional vegetation shall be removed.
16. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
17. A turn-around shall be provided as part of Phase 1 at the eastern terminus of parking area "A".
18. The proposed northbound right turn deceleration lane on Lee Highway (Route 29) shall be designed to VDOT standards.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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 March 27, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 308 March 19, 2002, (Tape 1), Scheduled case of:

9:30 A.M. TAVARES FAMILY L.P., A 2001-LE-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants must clear violations indicated in a

Notice of Violation dated June 15, 2001, within 30 days of the date of the Notice. Located at 7805 Cinder Bed Rd. on approx. 21,780 sq. ft. of land zoned I-4. Lee District. Tax Map 99-2 ((1)) 22. (admin moved from 10/30/01)(def from 12/4/01)

9:30 A.M. TAVARES FAMILY L.P., A 2001-LE-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants must clear violations of the Zoning Ordinance as set forth in Notice of Violation dated August 9, 2001, within 60 days of the date of the Notice of Violation. Located at 7803 Cinder Bed Rd. on approx. 21,780 sq. ft. of land zoned I-4. Lee District. Tax Map 99-2 ((1)) 21. def from 12/4/01)

Mr. Hart gave a disclosure but indicated that it would not affect his ability to participate in the public hearing.

Jayne C. Reale, Zoning Administration Division stated that the appeals were determinations that the appellants did not clear violations indicated in Notices of Violation within the prescribed time frames. She said the two lots involved in the respective appeals were abutting lots on Cinder Bed Road and the appellants owned both. Both Lots 21 and 22 were being used as contractors' office and with outdoor storage of a variety of construction equipment and materials. With the exception of the red brick structure on Lot 21, all the structures and uses on both lots were established without site plan, building permit or Non Residential Use Permit (NonRUP) approval. A metal prefabricated building was located across the property line between Lots 21 and 22. Although predominately located on Lot 21, the structure encroached onto Lot 22. A building permit application for this structure was submitted to the County on July 26, 1994, but was never approved.

Ms. Reale stated that the proposed resolutions of the violations on both lots were interdependent upon each. In order to resolve the violations on Lot 21, approval of a proffered condition amendment, lot line adjustment, and site plan would be necessary. In order to resolve the violations on Lot 22 approval of a site plan would be necessary. Ms. Reale stated that the appellants did not dispute the violations, rather they asked for additional time with which to comply with the Notices. She said the request for additional time was the only issue appealed. Ms. Reale stated that the appellants indicated a willingness to bring the properties into compliance and staff made every effort to work with the appellants towards this end, including deferring the public hearings for 3 months to allow time for the submission of the PCA application. She said given the circumstances, it was apparent that even with the diligent pursuit of all necessary approvals, a considerable amount of time would be needed to resolve the violations. The Notices of Violation were issued in June and August of 2000, and the PCA application was submitted on March 13, 2002. Ms. Reale said that considering the progress made on other properties along Cinder Bed Road, through the initiation of legal action against the property owners, it was staff's position that the subject cases would be best resolved through the litigation process. She said staff and the appellants could then work within the litigation process in the form of a consent decree to arrive at a proper time frame for bringing the properties into compliance with the Zoning Ordinance. Staff requested that the BZA take action to uphold the Zoning Administrator.

Bob Flinn, agent for the appellant, stated that the appellant was requesting more time to resolve the violations. He said the property was neat and well maintained in comparison to the other properties on Cinder Bed Road. Mr. Flinn stated that the appellant was the leader in cleaning up the properties and resolving the outdoor storage issues. He said that the lot lines needed to be adjusted which would require a lot of time. Mr. Flinn said that a proffered condition amendment would also be necessary to resolve some of the issues. He presented a development schedule proposal to the Board that would bring the property into compliance by August, 2003. Mr. Flinn stated that no one would be harmed or suffer if there were a delay in obtaining compliance.

Ms. Gibb asked staff if anyone was being harmed by the use.

William Shoup, Deputy Zoning Administrator, stated that the goal was not to close the business but to expeditiously bring it into compliance. He said there was machinery and equipment stored on site. Mr. Shoup stated that there was a vigorous effort to clean up the properties along Cinder Bed Road. He said the appellant went to court about Lot 23 and they offered a similar schedule for compliance, but the court did not accept the offer.

Ms. Gibb stated that the violation was issued in June and August and asked why was there a delay in

Page 310, March 19, 2002, (Tape 1), TAVARES FAMILY L.P., A 2001-LE-022 and TAVARES FAMILY L.P., A 2001-LE-028, continued from Page 309

resolving the issues. Mr. Flinn stated that the engineers in this area were very busy and the site was an engineering challenge.

Mr. Hammack stated that the appellant's schedule was ambitious even if they received simultaneous processing. He asked if the schedule was realistic. Mr. Flinn replied that the schedule was aggressive and optimistic.

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

Mr. Ribble stated that the timeline was a best case scenario timeline, and he did not believe that it was feasible. He moved to uphold the determination of the Zoning Administrator. 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 310, March 19, 2002, (Tape 1), Scheduled case of:

9:30 A.M. DONALD E. CRUMP AND CHESLEY CRUMP, A 2000-SP-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance. Appeal of determination that previously cited violations regarding the addition of structures and storage display areas on the appellants' property continue. Located at 7600 Clifton Rd. on approx. 2.89 ac. of land zoned C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 15. (moved from 1/16/01 and 4/17/01) (Def. From 8/14/01) (Cont'd from 1/15/02) (Deferred for decision only from 2/12/02)

Chairman DiGiulian recused himself from the public hearing because he worked on the appellant's site plan.

Jayne Reale, Zoning Administration Division, stated that the issues on appeal had been resolved.

Mr. Pammel moved to dismiss A 2000-SP-029. Ms. Gibb seconded the motion which carried by a vote of 5-0. Chairman DiGiulian recused himself from the public hearing, and Mr. Kelley was absent from the meeting.

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Page 310, March 19, 2002, (Tape 1), After Agenda Item:

Request for Consideration of Acceptance of an Appeal  
Hai T. Ngo/Teo Chew Association

Mr. Hammack asked if staff had proof that the appellant received notice. William Shoup, Deputy Zoning Administrator, stated that notice was served by the Sheriff's office.

Mr. Hammack moved to accept the appeal. Ms. Gibb and 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 310, March 19, 2002, (Tape 1), After Agenda Item:

Approval of September 25, 2001 Minutes

Mr. Pammel moved to approve the minutes. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 311, March 19, 2002, (Tape 1), After Agenda Item:

Request for Waiver of 12-month Waiting Period  
VC 01-L-085/SP 01-L-033

The Board the deferred the above referenced item to March 26, 2002.

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Page 311, March 19, 2002, (Tape 1), After Agenda Item:

Request for Intent to Defer  
Andrew Chapel United Methodist Church, SPA 83-D-045-2

Mr. Pammel moved to approve the Intent to Defer for the above referenced application to defer to May 14, 2002, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 311, March 19, 2002, (Tape 1), After Agenda Item:

Request for Reconsideration  
Paul E. Hardy, VC 01-B-205

There was no motion, and the Request for Reconsideration was denied.

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Page 311, March 19, 2002, (Tape 1), After Agenda Item:

Approval of March 12, 2002 Resolutions


Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:33 a.m.

Minutes by: Regina Thorn Corbett

Approved on: August 6, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 26, 2002. The following Board Members were present: Chairman John DiGiulian; James Hart; Robert Kelley; James Pammel and John Ribble. Nancy Gibb and Paul Hammack were absent from the meeting.

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

Page 313, March 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. THO XUAN NGUYEN, VC 02-L-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.9 ft. and 13.2 ft. from one side lot line and 12.7 ft., 14.3 ft. and 14.5 ft. from other side lot line and deck 39.6 ft. from front lot line. Located at 6255 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tho Xuan Nguyen, 6255 Willis Street, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of first and second story additions to be located 14.9 feet and 13.2 feet from the northern side lot line and other additions 12.7 feet, 12.4 feet, 14.5 feet from the southern side lot line and a balcony to be located 39.6 feet from the front lot line. The Zoning Ordinance requires a minimum side yard of 20 feet and a minimum front yard of 40 feet; therefore, variances of 5.1 feet and 3.8 feet from the northern lot line and 4.3 feet, 5.7 feet and 5.5 feet from the southern lot and a variance of 0.4 feet from the front lot line were requested.

Mr. Nguyen presented the variance request as outlined in the statement of justification submitted with the application. He explained that he needed the additions to accommodate his growing family.

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

Mr. Pammel stated that the variance requests were minimal and the property was extremely narrow in width.

Mr. Pammel moved to approve VC 02-L-004 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THO XUAN NGUYEN, VC 02-L-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.9 ft. and 13.2 ft. from one side lot line and 12.7 ft., 14.3 ft. and 14.5 ft. from other side lot line and deck 39.6 ft. from front lot line. Located at 6255 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 14. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is exceptionally narrow with a width of 65 feet.
4. The subject property is zoned R-1 but actually developed to one-quarter acre standards and is a

non-conforming lot.

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

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

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

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

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

1. This variance is approved for the location of additions as shown on the plat prepared by Larry N. Scartz, dated November 16, 2001, 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. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3,

Page 315, March 26, 2002, (Tape 1), THO XUAN NGUYEN, VC 02-L-004, continued from Page 314

2002. This date shall be deemed to be the final approval date of this variance.

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Page 315, March 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. H. BRADFORD GLASSMAN, VC 02-V-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.2 ft. from front lot line. Located at 6428 Potomac Ave. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 31.

This case was administratively moved to April 16, 2002, at 9:00 a.m.

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Page 315, March 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. WAYNE J. SCHELL, JR., SP 02-P-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 18.7 ft. from rear lot line. Located at 2318 Malraux Dr. on approx. 8,402 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 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. Mark Bergoffen, 6862 Elm Street, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit an addition to remain 18.7 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a modification of 6.3 feet was requested.

Mr. Bergoffen, agent for the applicant, presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the applicant had retained a contractor to construct the patio room by enclosing an existing patio and after the exterior work had commenced a neighbor questioned whether or not there was a set back problem. He said that the applicant was not aware of any set back violation because he thought that the property extended farther than it did.

Mr. Pammel asked if the contractor had obtained a building permit. Mr. Bergoffen answered that no building permit had been obtained by the contractor. Mr. Pammel requested that the applicant provide staff with the name of the contractor so appropriate action could be taken.

Mr. Hart asked for clarification that an old deck was replaced by a new deck that was longer than the original. Mr. Schell replied that was correct. Mr. Hart asked if the new deck extended further into the rear yard than the old deck did. Mr. Bergoffen replied that it did not.

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

Mr. Hart moved to approve SP 02-P-002 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE J. SCHELL, JR., SP 02-P-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 18.7 ft. from rear lot line. Located at 2318 Malraux Dr. on approx. 8,402 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 85. Mr. Hart moved that the Board of Zoning Appeals adopt the following

resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 26, 2002; and

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

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

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

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

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

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

1. This Special Permit is approved for the location of an addition, as shown on the plat prepared by George M. O' Quinn, dated November 19, 2001, as revised through January 15, 2002, 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 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 3, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 317, March 26, 2002, (Tape 1), Scheduled case of:

9:30 A.M. EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9100 Furnance Rd. on approx. 7.67 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 23. (Def. from 12/5/00. Moved from 3/6/01. Def. from 4/3/01. Def from 10/2/01 and 12/11/01 for Decision Only)

Susan Epstein, Zoning Administration Division, explained that the appeal was of a determination that the appellants had established a junk yard on the property in the R-1 District in Violation of the Zoning Ordinance. She explained that the appeal had been deferred for Decision Only four times to allow additional time for resolution of the violation. She informed the Board that on December 11, 2001, it was noted that the appellant had entered into an agreement to sell the property in late April and as part of that agreement the property would be cleared of debris. She submitted photographs taken by staff on March 25, 2002, which revealed that although much progress had been made on the property, it still met the definition of a junk yard.

Roy Spence, agent for the appellants, stated that there had been a substantial improvement on the property and there was a binding contract which required that the property was cleaned up to the purchasers' satisfaction. He said that there was a penalty clause in the contract as well as an agreement to allow the purchaser to use some funds to finish up any clean up on the property. He requested a deferral to allow the appellant time to meet contractual obligations.

Mr. Ribble moved to defer A 2000-MV-026 for Decision Only to October 29, 2002, at 9:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 317, March 26, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MARILDA N. ADAMS, A 2000-DR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has added fill dirt on her property to a depth in excess of eighteen inches and thus altered the natural drainage in the area in violation of Zoning Ordinance provisions. Located at 6312 Old Dominion Dr. on approx. 9,322 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 136. (Moved from 3/6/01, 5/8/01, 6/26/01, 9/25/01 and 1/29/02)

William E. Shoup, Deputy Zoning Administrator, explained that Mr. McGinty, the appellant's engineer, was present.

Susan Epstein, Zoning Administration Division, explained that the appeal was of a determination that fill dirt was added to a property in excess of 18 inches in depth and altered the natural drainage which was a violation of the Zoning Ordinance. She stated that recently substantial progress had been made on the property and a rough grading plan was approved on March 13, 2002; however, the grading plan was not considered finalized until a construction permit had been applied for, a conservation escrow had been paid, the actual permit obtained, and a final inspection performed. She stated that the conservation escrow fee had been paid and the process for starting the construction application permit had commenced. She indicated that staff was in support of a deferral to allow the appellant time to finalize the application process and schedule a final inspection by the County.

Mr. McGinty, agent for the appellant, explained that the appellant was in favor of a deferral to allow time to clear up the Zoning Violation.

Mr. Pammel moved to continue A 2000-DR-038 to September 17, 2002, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 318, March 26, 2002, (Tape 1), Scheduled case of:

9:30 A.M. JAMES J. AND MARY D. BRIODY, A 2001-PR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are maintaining a fence on a corner lot which exceeds 4.0 ft. in height and which obstructs sight distance, all in violation of Zoning Ordinance provisions. Located at 10007 Oakton Crossing Ct. on approx. 17,266 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((50)) 5. (Admin. moved from 2/12/02)

This appeal was administratively moved to April 23, 2002, at 9:30 a.m.

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Page 318, March 26, 2002, (Tape 1), Scheduled case of:

9:30 A.M. LEISURE FITNESS, INC., A 2001-PR-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination to deny Sign Permit Application 0110-7781-5015 because the proposed sign extends above the perimeter of the roof in violation of Par. 1 of Sect. 12-203 of the Zoning Ordinance. Located at 8133 Watson St. on approx. 28,423 sq. ft. of land zoned C-7. Providence District. Tax Map 29-4 ((2)) B2.

This appeal was administratively moved to May 28, 2002, at 9:30 a.m.

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Page 318, March 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Greenbriar Civic Association, SPA 78-P-192-2

Mr. Pammel moved to approve the Additional Time Request for Greenbriar Civic Association, SPA 78-P-192-2. The new expiration date is August 13, 2002. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 318, March 26, 2002, (Tape 1), After Agenda Item:

Approval of October 2, 2001, October 9, 2001, October 30, 2001,  
November 6, 2001, November 13, 2001, and December 11, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 318, March 26, 2002, (Tape 1), After Agenda Item:

Request for Waiver of 12-month waiting period  
VC 01-L-085 / SP 01-L-033

Mr. Hart moved to waive the 12-month waiting period for VC 01-L-085 / SP 01-L-033. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 318, March 26, 2002, (Tape 1), After Agenda Item:

Approval of March 19, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of

Page 319, March 26, 2002, (Tape 1), After Agenda Item, continued from Page 318

5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 319, March 26, 2002, (Tape 1), After Agenda Item:

Discussion Regarding Korean Central Presbyterian Church, SPA 83-P-057-4  
Revised Proposed Development Conditions dated January 22, 2002

Susan Langdon, Chief, Special Permit and Variance Branch explained that the case had been approved without the adoption of development conditions that were the product of a series of mediation sessions between the church and the neighboring civic associations and as a result the Board had granted a request for reconsideration by the civic associations to be heard in the next two weeks. She informed the Board that the civic associations had requested that she send their requested conditions to the County Attorney's Office for an opinion on whether the conditions could be adopted by the Board. She explained that she did not feel it was appropriate to send them to the County Attorney without being directed to by the Board. She requested the Board's opinion regarding the matter.

Mr. Kelley suggested a deferral as Mr. Hammack was absent and he was the one who had made most of the development condition changes.

Mr. Kelley moved to defer decision until the April 2, 2002, After Agenda. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:40 p.m.

Minutes by: Lori M. Mallam

Approved on: August 13, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 2, 2002. The following Board Members were present: Chairman John DiGiulian, Robert Kelley, Nancy Gibb, Paul Hammack, James Hart, James Pammel, and John Ribble.

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no other Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 321, April 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. VICTOR MARTIN & GENEVIEVE BUCK SZALANKIEWICZ, VA 01-P-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.3 ft. from side lot line. Located at 2883 Hibbard St. on approx. 14,000 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((4)) 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. Victor Martin Szalankiewicz, 2883 Hibbard Street, Oakton, Virginia, replied that it was.

Mavis Stanfield presented the variance request as contained in the staff report. She said the applicant sought permission for a variance to construct a dwelling 10.3 feet from the side lot line. She said the original variance permit had approved the construction of a garage to be built 10.3 feet from the side lot line, but the plat had indicated that the garage would be 20.1 feet long and ran parallel to the side lot line. The current variance amendment application showed that the garage extended 27.3 feet along the side lot line. She said the Zoning Ordinance required a minimum side yard of 15 feet; therefore, a variance of 4.7 feet was requested.

Mr. Szalankiewicz presented the variance amendment request as outlined in the statement of justification submitted with the application. He said this oversight was due to the fact that the surveyors had not included a mud room off the back of the garage when they submitted the original plan to him.

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

Mr. Hammack moved to approve VA 01-P-12 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VICTOR MARTIN & GENEVIEVE BUCK SZALANKIEWICZ, VA 01-P-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.3 ft. from side lot line. Located at 2883 Hibbard St. on approx. 14,000 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((4)) 15. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. A variance for a shorter distance in the back of this location had previously been approved.
4. The small mud-room addition will not change or impact the findings of fact made before or change the character or harmony of the 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, shown on the plat prepared by Thomas F. Conlon, Jr., dated May 10, 2001, as revised through December 1, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 2002. This date shall be deemed to be the final approval date of this variance.

Page 323 April 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. COOPER-PAGE, INC., VC 2002-MV-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to vary the Zoning Ordinance provisions of Section 17-201 (3) (B). Located at 8101 Backlick Rd. on approx. 2.12 ac. of land zoned C-8. Mt. Vernon District. Tax Map 99-1 ((1)) 4 and 5D. (Moved from 4/9/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Greg Reigel, McGuire Woods, LLP, 1750 Tysons Boulevard, suite 1800, McLean, Virginia, replied that it was.

Mr. Hart made a disclosure that he was working with another attorney from Mr. Reigel's firm but did not believe that would affect his ability to participate in this case.

Mavis Stanfield presented the variance request as contained in the staff report. She stated that the applicant sought a variance to the Zoning Ordinance provisions of Sect. 17-201 (3) to allow development of the application property without an interparcel connection to Lot 5C. She said site plan 0497-SP-012 had been approved by the Department of Public Works and Environmental Services (DPWES) for the subject property on July 9, 2001, with a waiver of the interparcel access to Lot 5C.

Ms. Stanfield said the waiver had been appealed by the owner of Lot 5C and on November 6, 2001, the Board of Zoning Appeals (BZA) reversed the decision of DPWES to waive the interparcel access provision. She stated that a variance was required to permit establishment of the development on the site without an interparcel connection.

Mr. Reigel presented the variance request as outlined in the statement of justification submitted with the application. He stated that the variance was about proper land use planning and respecting the decision making of the Board of Supervisors (BOS) in the rezoning that preceded this variance application. He said that the application was not about a permanent limitation on any interparcel connection or relationship to the properties. He said that the BZA should allow the connection to occur in the manner approved by the BOS in the rezoning.

Mr. Reigel stated that he had reviewed the procedural structure of the application with the County Attorney's office prior to filing, and they concurred that it was an appropriate procedure to address this problem. He said the agent of the adjoining property owner had a contrary view and had submitted his comments to the Board in writing.

Mr. Reigel stated that for years the Comprehensive Plan had always recommended access for properties in this quadrant be oriented to Terminal Road. He said the reason for that was the existing and projected traffic volumes on Loisdale Road and the proximity of these properties to the intersection of Loisdale Road and Fairfax County Parkway.

Mr. Reigel stated that a traffic study had been done under the supervision of county staff and the Virginia Department of Transportation (VDOT) to try and confirm the mixture of use for the land. He said the result suggested a controlled access arrangement to Loisdale Road tied to very specific circumstances, Proffer 7. He said Proffer 7, which required access to Loisdale Road, be reevaluated when a connection to Terminal Road was made available either by extending the road or through some sort of an easement on the other property. He said they were about trying to take traffic away from Loisdale Road, not adding to it. Mr. Reigel stated that hardship standards were detailed in a narrative and had been submitted to the Board for the record. He said that interparcel connections were recorded all the time in Fairfax County between properties, but the subject property was an exception because of the marginal conditions at the Loisdale Road entrance.

Mr. Reigel stated that the analysis that had proceeded this application and the analysis done in conjunction with the application showed that opening the door to Loisdale Road, without the assurance of a link to Terminal Road, would subject the property to potentially thousands of additional vehicle trips. He said it would cause that entrance to fail either operationally or fail by operation of Proffer 7, which allowed the County to take away portions of the access if the trips exceed what had been shown in the study.

Ms. Gibb asked Mr. Reigel what would be built if the Board denied the variance request. Mr. Reigel replied that the site was already developed with a service station and related improvements which cost over \$2 million. He said the applicant had not been able to obtain final occupancy permits pending a resolution of

this issue.

Ms. Gibb and Mr. Reigel had a brief discussion about the access to the property. Mr. Reigel stated that the applicant wanted the interparcel access if it would be consistent with Proffer 7 and provided the link to Terminal Road that had always been contemplated.

Chairman DiGiulian called for speakers in support to the application.

Lavell Bell, 6700 Buckly Road, Springfield, Virginia, came forward to speak in support of the application because she was opposed to any travel connection between Loisdale Road and Terminal Road.

Howard Lee (no address given) came forward to speak in support of the application. He stated that he hoped this issue could be resolved as soon as possible, as it had been a major hardship on the community to not be able to access the service station.

Chairman DiGiulian called for speakers in opposition to the application.

Mark Jenkins, Agent for Gregory L. Granahan, owner of Parcel 5C, came forward to speak in support of the application. He stated he had represented Mr. Granahan with the reversal of the waiver at the BZA hearing in November. He stated that he questioned if the BZA had the power to grant the variance that was requested. He referred to the Virginia State Statute that defined a variance and said that the applicant had not asked for any dimensional or location variation of a required or permitted improvement. Mr. Jenkins stated that they had asked for approval of a variance in order to control and regulate the use of a public easement, which was beyond the definition of a variance as set forth in Virginia law.

Mr. Jenkins stated that the most fundamental error being made with this variance was that the interparcel connection would be unregulated. He said that if the Board did not grant the variance, the only people who could control the traffic would be the private property owners. He cited a Virginia statute that gave localities the authority to regulate interparcel connections and said that the site plan provisions of Article 17 gave the County the right to regulate the scope of use.

Mr. Reigel stated in his rebuttal that Proffers did not change the statute. He said that Mr. Jenkins and the Granahans suggested that the applicant trust the site plan process to insure that the issues got worked out. He said there already was a plan in place in the Proffers for rezoning and it was not reasonable to presume that the issues could be worked out better outside of that process.

Mr. Reigel stated that he believed that the adjoining property owner was in opposition to the application because he thought his land would be more valuable by having access to Loisdale Road and not just to Terminal Road.

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

Mr. Pammel stated that this was one of the more perplexing issues presented to the Board, and appreciated the concerns of both sides. He stated that the decision of the Board was going to rest upon the law. And the law has its perimeters to operate.

Mr. Pammel stated that he read all the related material that had been submitted. He said that the applicant must show a demonstrated hardship, and there did not appear to be one because the land was usable.

Mr. Pammel moved to deny VC 02-P-003 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COOPER-PAGE, INC., VC 2002-MV-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to vary the Zoning Ordinance provisions of Section 17-201 (3) (B). Located at 8101 Backlick Rd. on approx. 2.12 ac. of land zoned C-8. Mt. Vernon District. Tax Map 99-1 ((1)) 4 and 5D. (Moved from 4/9/02). 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, 2002; and

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

1. The applicants are the owners of the land.

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 April 10, 2002.

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Page 325, April 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. VERIZON VIRGINIA, INC., VC 02-P-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from front lot line. Located at 2935

Gallows Rd. on approx. 4.50 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 32.

Chairman DiGiulian stated that VC 02-P-003 had been administratively moved to 9/17/02.

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Page 326 April 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TERRI LEE & JAMES P. WEATHERHOLTZ, VC 02-Y-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. from rear lot line. Located at 5525 Shipley Ct. on approx. 9,170 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((11)) (3) 21. (Concurrent with SP 02-Y-004).

9:00 A.M. TERRI LEE & JAMES P. WEATHERHOLTZ, SP 02-Y-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 deck to remain 10.9 ft. from rear lot line. Located at 5525 Shipley Ct. on approx. 9,170 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((11)) (3) 21. (Concurrent with VC 02-Y-008).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Terri Lee Weatherholtz, 5525 Shipley Court, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicants sought a special permit for the minimum yard requirements based on an error in the building location to permit a deck to remain 10.9 feet from the rear lot line. He said with the permitted extension, the minimum rear yard required was 13 feet; therefore, a modification of 2.1 feet was requested for the deck.

Mr. Bernal stated that the applicants also had sought a variance to allow construction of a two story with basement addition to be located 20.1 feet from the rear lot line. He said the minimum rear yard requirement was 25 feet; therefore, a variance of 4.9 feet was requested.

Ms. Weatherholtz presented the special permit request as outlined in the statement of justification submitted with the application. She stated she and her husband originally had planned to replace their deteriorating deck as it was found to be unsafe. She said they designed a new and larger deck for the family use with special safety features. She stated that, in their haste to get the deck finished due to safety risks, they had neglected to get the necessary permits.

Ms. Weatherholtz presented the variance request as outlined in the statement of justification submitted with the application. She stated that her husband's grandmother had recently moved into their home and they wanted to accommodate her with a first floor bedroom and bathroom so that she did not need to use the stairs. She stated that they had planned to add a second story bedroom and an extension onto the basement in the future in order to meet the needs of their growing family, but decided to have all the work done at one time.

Ms. Weatherholtz stated that she had worked with a builder and an architect to be sure that the design of the outside of the house be in character with the style of homes in the neighborhood. She said she had talked to her neighbors and had their support for the addition.

Ms. Weatherholtz stated that their home backed up to a wooded area that screened the house from other homes behind them and the addition would be partially screened by existing tall trees. She said their lot had an unusual shape in that it came to a point in the center of the yard.

Mr. Hart asked if the deck was on the house when the family purchased the home and if the size was the same. Ms. Weatherholtz replied that deck was on the house at the time of purchase, and that the new deck they built was about three feet larger than the old deck.

Mr. Hart asked if Ms. Weatherholtz was aware that her fence was substantially off of the true property line.

Page 327, April 2, 2002, (Tape 1), TERRI LEE & JAMES P. WEATHERHOLTZ, VC 02-Y-008 and TERRI LEE & JAMES P. WEATHERHOLTZ, SP 02-Y-004, continued from Page 326

Ms. Weatherholtz replied that they were prepared to take the fence down if necessary. She said they had put the fence up because of a creek near her house for the safety of the children.

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

Mr. Pammel stated that in reviewing the plat, the fence encroachment was actually more than 20 feet and asked that staff look at that problem and take action if necessary.

Mr. Hart moved to approve SP02-Y-004 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TERRI LEE & JAMES P. WEATHERHOLTZ, VC 02-Y-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. from rear lot line. Located at 5525 Shipley Ct. on approx. 9,170 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((11)) (3) 21. (Concurrent with SP 02-Y-004). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot has a strange shape that pinches off in the middle.
4. Based on the configuration of the house, this would be the logical place for the addition.
5. The request is minimal.
6. The property to the rear is wooded and a storm drain area and the addition would not 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 an addition as shown on the plat prepared by George M. O'Quinn, dated August 2, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 2002. This date shall be deemed to be the final approval date of this variance.

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Mr. Hart moved to approve VC 02-Y-008 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TERRI LEE & JAMES P. WEATHERHOLTZ, SP 02-Y-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 deck to remain 10.9 ft. from rear lot line. Located at 5525 Shipley Ct. on approx. 9,170 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((11)) (3) 21. (Concurrent with VC 02-Y-008). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 2, 2002, 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 as shown on the plat prepared by George M. O'Quinn, dated August 2, 2001, as submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 329, April 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BRIGETTE & RONALD FRIEDMAN, VC 2002-PR-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 9.1 ft. from side lot line. Located at 10805 Tradewind Dr. on approx. 38,788 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 101. (Moved from 4/16/02).

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 Friedman, 10805 Tradewind Drive, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit the construction of a deck to be located 9.1 feet from the side lot line. He said the minimum side yard requirement was 20 feet; therefore, a variance of 10.9 feet was requested.

Mr. Friedman presented the variance request as outlined in the statement of justification submitted with the application. He stated that in the rear of the lot, the land had an extreme downward slope and he found that he needed to have a walkway to access a new addition on the back of his house. He said the walkway would be flat and could not be seen from the street because the house sits about 12 feet above it. He said the house would be architecturally compatible with the neighborhood.

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

Mr. Ribble moved to approve VC 2002-PR-010 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

BRIGETTE & RONALD FRIEDMAN, VC 2002-PR-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 9.1 ft. from side lot line. Located at 10805 Tradewind Dr. on approx. 38,788 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 101. (Moved from 4/16/02). 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, 2002; and

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

- 1. The applicants are the owners of the land.
- 2. The topography of the land is exceptional.
- 3. The deck will be an extension of the driveway.

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

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

the same vicinity.

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

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

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

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

- 1. This variance is approved for the location of a deck as shown on the plat prepared by Richard H. Bartlett, dated, December 26, 2001, signed through January 29, 2002, as submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 10, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 331, April 2, 2002, (Tape 1), Scheduled case of.

9:00 A.M. TRUSTEES OF THE ANDREW CHAPEL UNITED METHODIST CHURCH, SPA 83-D-045-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-045 previously approved for a church with a child care center and nursery school to permit site modifications. Located at 1301 Trap Rd. on approx. 7.01 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 47. (In Association with SE 01-D-023 and 2232-D01-17). (Def. From 12/4/01 and 2/12/02)

Chairman DiGiulian stated that the Board issued an Intent to Defer this case to May 14, 2002.

Ms. Gibb moved to approve the deferral of SP 83-D-045-2. Mr. Ribble seconded the motion, which carried with a 7-0 vote.

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Page 332, April 2, 2002, (Tape 1), Scheduled case of:

9:30 A.M.      REPHAEL AND JENIFER BAEHR, A 2001-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the maintenance of two separate dwelling units on appellants' property is a violation of Sect. 2-501 of the Zoning Ordinance. Located at 904 Seneca Rd. on approx. 1.21 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((1)) 21. (Admin moved from 2/19/02)

Chairman DiGiulian stated that Appeal A 2001-DR-042 had submitted a request for a deferral.

Jack Reale, Assistant to the Zoning Administrator, stated that the appellants had submitted a letter requesting a deferral. He stated they were out of town and were not available for the hearing

He stated that this was their second deferral request. He said the appeal involved a notice of violation that the appellants were maintaining two separate dwelling units on a residential property in violation of the Ordinance. He said that staff objected to the deferral and was ready to go forward with the hearing.

Chairman DiGiulian asked if there was anyone to speak to the question of deferral.

Mr. Pammel moved to go forward with the appeal.

Mr. Reale stated that the appellants had been maintaining two separate dwellings units on the subject property and were in violation of Sect. 2-501 of the Zoning Ordinance. He said that a 35 foot recreational vehicle was located behind the principal dwelling structure and was found to be similar to a travel trailer. He said the trailer was found to be occupied, and the appellants admitted that the trailer was being rented to provide additional income.

Mr. Reale stated that the trailer contained permanent provisions for living, sleeping, eating, cooking and sanitation and was therefore similar to a dwelling unit as defined under the Zoning Ordinance. He said that recreational vehicles were permitted to be parked on a residential property as an accessory use if it was subordinate to the principle use.

Mr. Reale stated that the appellant's intended purpose for keeping the trailer on the property was for the use of a second independent dwelling, completely unrelated to the principle dwelling unit. He said that it had been determined that the appellants travel trailer met the Zoning Ordinance definition of a dwelling unit, thus there were two dwelling units on the property which was in violation of Sect.2-501.

Mr. Hammack asked if the vehicle was currently occupied. Mr. Reale replied that a recent inspection by the Zoning Enforcement Staff had not able to confirm whether the trailer was presently occupied or not.

Mr. Hammack asked if the trailer became disconnected from the power utilities and septic fields, would it be allowed to stay as a RV. Mr. Reale replied that they would not be able to occupy it as a RV. He said it would have to be viewed under the Zoning Ordinance as an accessory use to the principle dwelling and there had been no indication of purpose or intent that would indicate that it had been used as an occasional recreational vehicle.

Mr. Pammel clarified that he understood the appellants wanted to reside in the trailer over a limited period of time whenever they returned to the area. However, they intended to rent the principal residence to other people while they were overseas. Mr. Shoup replied that was correct and that was why Zoning Enforcement wanted to state that even an occasional use, whether the RV was hooked up or not, would not be considered an accessory, because it would be two unrelated activities. He said that the occupancy of the main dwelling unit would be by people who did not have any connection or involvement to the occupants of the trailer on that site.

Mr. Hart asked about the hook-up to the septic field and asked if there was some limitation in the Ordinance that would allow a hook-up of a second unit, such as the travel trailer to an existing septic field. Mr. Reale replied that he had spoken with the Health Department regarding that issue. He said that recently, a new septic drain field had been approved for this property and the approval was for a four bedroom house. He said the principal dwelling contained three bedrooms.

Mr. Reale stated that the Health Department said they would not be involved in this matter because the zoning issue superseded the use of the drain field. He said that the Health Department indicated that a

recreational vehicle such as this one could be permitted, upon occasional request, to discharge sewage into a septic drain field. He said that would only be acceptable by specific permission of the Health Department and there had not been anything approved for the existing hook-up.

Chairman DiGiulian asked if anyone was present to speak for the appellant.

Chairman DiGiulian called for speakers to address the appeal.

Pam Swallow, 11506 Saunders Haven Court, Great Falls, Virginia came forward to speak in opposition to the appeal. She stated she had some letters that have been written up by neighbors who could not be at the hearing that she wanted to submit. She said she was notified of this trailer being on the property by a certified letter from the County.

Ms. Swallow stated that one concern she had was that the septic and sewer being hooked up to two parcels. She said the second concern she wanted to share was that she had received a letter from Mr. Baehr in which he stated that the trailer was only there temporarily. She stated he indicated that he had already rented the property; however, he said it would be for only a couple of months, and then the rental would be terminated. She said the situation appeared to be much more permanent than what Mr. Baehr had stated.

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

Ms. Gibb stated she felt that the Zoning Administrator should be upheld due to the facts presented. She said that the use of the trailer as an accessory dwelling unit would have been acceptable; however, this did not comply with the Zoning Ordinance requirements for an accessory use.

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

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Page 333, April 2, 2002, (Tape 1), Scheduled case of:

9:30 A.M. A&R FOODS, INC. AND TOWER GROUP, LLC, A 2001-SU-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a fast food restaurant to occupy the property without a valid Non-Residential Use Permit in violation of Sect. 18-701 of the Zoning Ordinance. Located at 5906 Old Centreville Rd. on approx. 2.82 ac. of land zoned C-6 and HC. Sully District. Tax Map 54-4 ((5)) 2A. (Admin. moved from 3/12/02) (Deferred from 3/5/02)

Chairman DiGiulian stated a letter had been received from the appellant requesting a withdrawal. Mr. Pammel moved to allow the withdrawal of A 2001-SU-046. Mr. Hammack seconded the motion, which carried with a 7-0 vote.

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Page 333, April 2, 2002, (Tape 1), After Agenda Items:

Approval of July 11, 2000, July 17, 2001, and August 1, 2000 Minutes

Mr. Pammel moved to approve the minutes of July 11, 2000, July 17, 2001, and August 1, 2000. Mr. Hammack seconded the motion, which carried with a 7-0 vote.

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Page 333, April 2, 2002, (Tape 1), After Agenda Items:

Approval of Revised Proposed Development Conditions  
Korean Central Presbyterian Church, SPA83-P-057-4

Chairman DiGiulian stated that the Civic Association had asked that the Board send the Revised Proposed

Page 334, April 2, 2002, (Tape 1), After Agenda Items, continued from Page 333

Development Conditions for the Korean Central Presbyterian Church to the County Attorney's Office for interpretation.

Mr. Hammack stated that there had not been any new information, and believed that the Board should make the decisions regarding the revised development conditions. He moved that the Board take no action on this case at this time.

Mr. Pammel stated that he felt the development conditions needed to be written more explicitly, that they were too vague in their language. He said he had a problem with violations of this use permit being sent to someone other than the Board, who had imposed the conditions, for resolution.

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

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Page 334, April 2, 2002, (Tape 1), After Agenda Items:

Approval of March 26, 2002 Resolutions

Mr. Pammel moved to approved the March 26, 2002 Resolutions. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

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Mr. Hammack stated that the BOS vs. BZA issue that involved CESC Tyson's Dulles Plaza, an application which had been heard some time ago, had need for discussion. He moved that the Board go into Executive Session to discuss legal matters that arose out of that ruling. The motion was seconded by Mr. Pammel, which carried with a 7-0 vote.

The Board went into Executive Session at 10:25 and reconvened at 10:35.

Mr. Hammack moved to certify that the BZA had discussed only the matters that had been identified in the motion to convene during the Executive session. Mr. Ribble seconded the motion, which carried with 7-0 vote.

Mr. Hammack moved that he would contact counsel to appear on the following Tuesday at 10:00 a.m. in order to further discuss legal matters. Mr. Pammel seconded the motion, which carried with a 7-0 vote.

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Mr. Hart stated that the Planning Commission's Outreach Meeting was going to be held on the following Saturday and he had been asked by Commissioner Alcorn to give him input from the BZA. He asked if the Board had any comments or changes to the draft that he had distributed to the Board the prior week which he and Mr. Pammel had written regarding the Residential Criteria Meeting.

Mr. Pammel said he would like to pass the comments on to the Planning Commission for their consideration and preparation of language that would be included in the residential standards.

Chairman DiGiulian stated he had a problem with the Board having that level of involvement in the writing of the development standards. He said he believed it was the Board's job to interpret the standards.

There was a brief discussion of whether the Board should become involved.

The Board members thanked Mr. Hart and Mr. Pammel for gathering the information for input to the Planning Commission. However, it was decided that the Board members should give input as individuals as opposed to the Board of Zoning Appeals.

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Page ~~335~~ April 2, 2002, (Tape 1), continued from Page 334

As there was no other business to come before the Board, the meeting was adjourned at 10:42 a.m.

Minutes by: Judith A. Gobbi

Approved on: September 17, 2002

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John P. DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 9, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; James Pammel; and John Ribble. Robert Kelley was absent from the meeting.

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

Page 337 April 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DAVID L. & SANDRA J. GIDDENS, VC 01-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 7921 Tire Swing Rd. on approx. 13,402 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-4 ((45)) 16. (Admin moved from 10/23/01 and 12/4/01 for notices) (Deferred from 2/19/02)

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

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure, a detached garage, in the front yard of a lot containing 36,000 square feet or less. Ms. Stanfield noted that a revised affidavit had been distributed to the Board.

Ms. Giddens, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the architect recommended that the applicants build a detached garage to be in character with the existing house that was built in 1913. Ms. Giddens stated that the neighbors were in support of the application and it was approved by the homeowners' association. She said the accessory structure would increase the value of the house and it would be in harmony with the neighborhood.

Mr. Pammel asked if the applicant would be willing to adjust the structure to be 5 feet from the property line. Ms. Giddens replied that would not be an issue.

Mr. Hammack asked about the need for a second story. Ms. Giddens replied that the second story was no longer being requested.

Mr. Hammack asked what was on Parcel A. Ms. Giddens replied that was community open space.

Mr. Hart asked if a new plat would be needed because the request for a second story had been withdrawn. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the Board could implement development conditions that would address it or they could request that a revised plat be submitted.

Mr. Hart asked if the structure could be moved closer to the house. Ms. Giddens replied yes because part of the stone patio could be removed.

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

Mr. Pammel moved to approve VC 01-P-129 contingent on receiving a revised plat within 30 days depicting the addition with a minimum side yard of 5 feet and a minimum front yard of 11.7 feet. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Ms. Gibb stated that she had visited the property and she felt that the application could be approved as requested.

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Page 337 April 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. HUNG T. NGUYEN, VC 02-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. from side lot line. Located at 2106 Greenwich St. on

approx. 15,040 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 55. (Concurrent with SP 02-D-003).

9:00 A.M. HUNG T. NGUYEN, SP 02-D-003 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.5 ft. and accessory structure to remain 5.0 ft. from side lot line. Located at 2106 Greenwich St. on approx. 15,040 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 55. (Concurrent with VC 02-D-007).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hung T. Nguyen, 2106 Greenwich Street, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction in minimum yard requirements based on an error in building location to permit an addition to remain 6.5 feet and an accessory structure to remain 5 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 8.5 feet for the addition and 10 feet for the garage were requested. The applicant also requested a variance to permit construction of a second story addition 14.9 feet from the side lot line. A minimum side yard of 15 feet is requested; therefore, a variance of 0.1 feet was requested.

Mr. Nguyen presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to be able to provide more living space for his growing family. Mr. Nguyen stated that the neighbors were in support of the application.

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

Mr. Hart moved to approve SP 02-D-003 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HUNG T. NGUYEN, SP 02-D-003 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.5 ft. and accessory structure to remain 5.0 ft. from side lot line. Located at 2106 Greenwich St. on approx. 15,040 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 55. (Concurrent with VC 02-D-007). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 9, 2002; 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 and an accessory structure, as shown on the plat prepared by George M. O' Quinn, dated September 4, 2001, 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. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 17, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to approve VC 02-D-007 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HUNG T. NGUYEN, VC 02-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. from side lot line. Located at 2106 Greenwich St. on approx. 15,040 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 55. (Concurrent with SP 02-D-003). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 9, 2002; and

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

1. The applicant is the owner of the land.
2. The lot is narrow with a width of only 70 feet.
3. The additions to the house are done in a logical way and oriented more to the long axis of the lot.
4. The addition is no closer to the lot line than the existing house.
5. There will not be any negative impacts on surrounding neighbors.

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

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

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

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

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

1. This variance is approved for an addition, as shown on the plat prepared by George M. O'Quinn, dated September 4, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Page 341, April 9, 2002, (Tape 1), HUNG T. NGUYEN, VC 02-D-007 and HUNG T. NGUYEN, SP 02-D-003, continued from Page 340

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 April 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 341, April 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SALAMEH BROTHERS CONSTRUCTION CO., VC 01-V-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 90.11 and proposed Lot 2 having a lot width of 75.18 ft. Located at 9111 Ox Rd. on approx. 2.73 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 29. (Moved from 2/5/02 and 3/5/02)

Chairman DiGiulian noted that VC 01-V-187 had been administratively moved to June 4, 2002.

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Page 341, April 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83- P-057- 4 Appl. under Sect(s). 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a church to permit building additions, increase in seating, site modifications and change in development conditions. Located at 8526 Amanda Pl. on approx. 12.38 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Moved from 12/19/00, 1/30/01, 3/6/01, 10/2/01, 11/6/01 and 12/18/01) (Reconsideration approved 1/29/02)

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 Mereness, 10706 Vandor Lane, Manassas, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The Planning Commission held a public hearing on SPA 83-P-057-4 on March 22, 2001, and issued an approval recommendation to the BZA. On April 3, 2001, the BZA held a public hearing on the subject application and continued the public hearing to October 2, 2001, requesting that the church and neighbors enter into mediation to resolve issues, concerning existing parking and the proposed changes to the church. The Northern Virginia Mediation Service facilitated mediation sessions between representatives of the Korean Central Presbyterian Church and the residents of the Dunn Loring Woods and Stonewall Manor Subdivisions. The hearing was moved several times so that the mediation sessions could be completed. A public hearing was held before the BZA on January 22, 2002, at which time the subject application was approved. A reconsideration request from the neighboring civic association was granted on January 29, 2002. The current application was the same as that heard by the BZA on January 22, 2002.

The site currently contains a 500-seat church, an education center and 328 parking spaces. At the April 3, 2001, public hearing, the applicant presented a request which included a new 1,000-seat sanctuary for a total of 1,500 seats on site, an 18,425 square foot addition to the existing education building, and 172 additional parking spaces for a total of 500 parking spaces on site. The existing sanctuary would be retained for a chapel. Following mediation, the applicant submitted a revised plat dated through October 25, 2001. The application remains the same, in that the request still included a new 1,000-seat sanctuary for a total of 1,500 seats on site, an 18,425 square foot addition to the education building, and 500 parking spaces. However, the site had been redesigned with all buildings including the new and old sanctuaries and the education building located north of Amanda Place; and only the parking areas and stormwater management facilities located on the south side of Amanda Place.

On January 15, 2002, staff published an addendum to the original staff report, which outlined the changes in the application. Additional revised proposed development conditions dated January 22, 2002, were distributed to the BZA on that date in response to a letter from the Northern Virginia Mediation Service, dated

January 11, 2002, which outlined the agreement between the church and the neighbors. The letter included proposed revisions to staff's development conditions. Staff supported all revisions proposed except for the last sentences in Development Conditions 25 and 27 and incorporated the revisions into the Revised Proposed Development Conditions. As stated in the addendum, staff recommended approval and believed that the application, as revised, was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance.

Mr. Mereness, the applicant's agent, stated that they were present to answer questions from the Board since this was a reconsideration.

Mr. Hammack stated that one of the reasons the reconsideration was granted was due to the church moving to a new location. He asked for an explanation.

Pastor Lee came forward, stating that land had been purchased but the church did not know whether they would be able to build on the land. He said a major decision would be made after his retirement in July regarding whether they would remain on the current property.

Mr. Hart asked what would happen on the existing site with regard to parking and the other ongoing violations if the applicants never built the addition on the old site.

Susan Langdon, Chief, Special Permit and Variance Branch stated that if the subject special permit amendment were approved, it would supercede the previous amendment; however, the previous amendment was currently active and an additional time had been granted for it. Ms. Langdon stated that if neither amendment was implemented, staff would have to determine what the applicant would need to do to be in compliance with either the current special permit amendment or the previous amendment. Ms. Langdon said if the applicant decided that they would not continue, staff would need to have a plan submitted showing what part of the previous special permit they implement and what they would have to do to address the issues associated with the property.

Mr. Hart asked would the applicant have to do stormwater improvements if they did nothing else on the site. Ms. Langdon stated that the applicants would have to submit a plan to the Department of Public Works and Environmental Services to address the issues on the site and they would have to be in conformance with the Public Facilities Manual and the Zoning Ordinance.

Mr. Hart asked if the BZA approved an additional time. Ms. Josiah replied yes and the expiration date was July 15, 2002.

Chairman Digiulian called for speakers.

Ken Quincy, President Dunn Loring Woods Civic Association; Harriett Epstein, 2602 Dennis Drive; Linus Upson, 2601 Dennis Drive; Ky Yoon, 4210 Raven Drive; and Mike Kavin, Dunn Loring Gardens Civic Association. The speakers requested that the BZA adopt the conditions that were agreed upon through mediation between the applicant and the neighbors.

Mr. Hart asked if the residents of the community would be willing to accept having a community/church liaison group that would maintain a side agreement with the applicant that did not require enforcement from the BZA. Mr. Quincy replied that there would be a community/church liaison group regardless of the BZA's decision.

Karen Hunt, 2131 Villanova Drive, and John Turnman, 2600 Amanda Court, came forward to speak in opposition. They expressed concerns relating to safety, traffic, buffering, the bulk and height of the building, parking, drainage, addressing the outstanding issues, and the uncertainty of the development.

Mr. Mereness stated in his rebuttal that the majority of the previous conditions had been implemented with the exception of stormwater management.

Ms. Gibb asked about the buffering on the north side of the property. Ms. Josiah stated that a school abutted the property on the north and staff felt that a buffer as wide as the one on the south side of the property was not necessary.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that this was a tough case. He said he made the motion to approve the church in January with all of the changes based on the assumption that the issues involving the expansion had been worked out to the satisfaction of the community groups as well as the church. Mr. Hammack said he was the one who deleted much of the proposed development conditions because he felt they were inappropriate or went beyond the scope of the BZA's authority to impose. He said the deletion of a lot of those proposals created a lot of problems for the community. Mr. Hammack said the approval was extremely close the last time and this was a whole new application before the BZA. He said one of the reasons for the reconsideration was that the BZA never explored the issue of whether the church was going to move to a new site and split the congregation and therefore, obviate the need for an expansion on the current site. Mr. Hammack said he was probably wrong in making the motion to approve the application in January given the uncertainty of the conditions that he currently knew existed with respect to the expansion and with respect to working out all of the development conditions. He said he was unwilling to adopt all of the 36 conditions submitted for reasons set forth in January. He said the proposed expansion, if approved, would effectively maximize all of the development that could possibly be put on the site. Mr. Hammack stated that there were parking and traffic problems. Mr. Hammack said given the history of the site he did not think the applicant satisfied the general standards. He said neither the church or the various community groups sought professional advice regarding the development conditions on what could be included in them and what could not. Mr. Hammack said the applicant failed to satisfy Standards, 3, 4, and 7. He moved to deny the application.

Mr. Ribble seconded the motion.

Ms. Gibb asked what would be the status if the application was denied. Ms. Langdon replied that there would be approval of only the third amendment which the applicant could choose to implement or not.

Ms. Gibb asked if there was a time line to complete the stormwater management portion of the approval. Ms. Langdon said they would have to complete it before obtaining final approval from the County.

Mr. Pammel said this was difficult because the BZA had previously approved the application with conditions. He said he understood the position of the community, but that he had reservations about how some of the conditions were to be implemented. Mr. Pammel said he was concerned with the preservation of vegetation. He said the proposal made by the community was not a strong statement. Mr. Pammel said he was concerned with withdrawing the previous approval of the subject application. He said the application was viable, but the church did not know whether they would implement the approval of the fourth amendment. Mr. Pammel said he was uncomfortable without a position from the church that was where they would be located. He said he would be inclined to defer the application for several months to obtain a specific response from the church as to what their plans were. Mr. Pammel made a substitute motion to defer SPA 83-P-057-4 to September 10, 2002.

Mr. Hart seconded the motion.

Mr. Hammack said he would accept the substitute motion, but one of the reasons he moved to deny was because the BZA would still be in the same position they were currently. He said it would leave the applicant with the problem of deciding what to do with respect to the third amendment. Mr. Hammack stated that a deferral would not resolve the issue. He said it would allow more time for the community groups to review development conditions. Mr. Hammack said he would like clear direction on where the church was going. He said he did not want to approve a church expansion that maxed out the site completely, where there were already serious problems. Mr. Hammack said his thought with making the motion in January was that a lot of the problems had been addressed and maybe not alleviate everything, but try to improve the situation. He said he did not want to leave the community in a situation here the church would leave and another group comes in who did not negotiate those development conditions and would not feel bound by them. Mr. Hammack stated that he would like confirmation from the church with regard to whether they would remain on the property or leave.

Ms. Gibb stated that the development did not fit on the site. She said the fact that there were so many development conditions indicated that there were a lot of issues and would require a lot of surveillance unless everyone acted in good faith every minute and there were no misunderstandings. Ms. Gibb said what

tipped the balance was knowing that the church might have another option. She said if the BZA was decisive, it might help the applicant make their decision.

Mr. Pammel said he agreed with Mr. Hammack that the site was maxed out and there could not be any further expansion on the site.

Mr. Hart stated that he agreed with a lot what had been said by other BZA members. He said he was not comfortable with the lack of particulars in the conditions submitted by the liason group. Mr. Hart said the reason he supported Mr. Pammel's motion was because he was concerned about the developing uncertainty on whether to expand the site or move someplace else. He said he believed that something was approvable on the site, but he was concerned that if the new site did not work out, the church would be left with nothing. Mr. Hart said a deferral would allow the church time to make up its mind.

The motion to defer failed by a vote of 3-3. Chairman DiGiulian, Ms. Gibb, and Mr. Ribble voted against the motion. Mr. Kelley was absent from the meeting.

The motion to deny carried by a vote of 4-2. Mr. Hart and Mr. Pammel voted against the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83- P-057- 4 Appl. under Sect(s). 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a church to permit building additions, increase in seating, site modifications and change in development conditions. Located at 8526 Amanda Pl. on approx. 12.38 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Moved from 12/19/00, 1/30/01, 3/6/01, 10/2/01, 11/6/01 and 12/18/01) (Reconsideration approved 1/29/02) 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 9, 2002; and

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

1. The applicants are the owners of the land.
2. Special permit standards 3, 4, and 7 were not met.
3. The proposed use will adversely affect the use of neighboring properties.
4. The location size and height of the proposed buildings and extent of screening will hinder or discourage appropriate use of adjacent properties.
5. The proposed use provides pedestrian and vehicular traffic that conflicts with the existing traffic in the neighborhood.
6. Adequate drainage and parking has not been provided.
7. The proposal is not in harmony with the Comprehensive Plan or in conformance with the Zoning Ordinance.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 3-403 of the Zoning Ordinance.

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



Page 345, April 9, 2002, (Tape 1), TRUSTEES OF THE KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83-P-057- 4, continued from Page 344

Mr. Ribble seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Pammel voted against the motion. Mr. Hart moved to waive the 1-year waiting period for re-filing an application. 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 April 16, 2002.

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Mr. Hammack moved that the the Board recess and go into Executive Session for consultation with legal counsel and/or briefing by staff members, consultants and attorneys pertaining to actual and probably litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Virginia Code Sect. 2.1-344.A7.

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

The Board recessed at 10:36 a.m. and reconvened at 11:29 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 6-0. Mr. Kelley was absent from the meeting.

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Page 345, April 9, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MEADOWS FARMS, INC. AND BETTY M. MEADOWS, A 2001-DR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' plant nursery business has been expanded without Board of Supervisors' approval of a Category 5 Special Exception, that building additions and other structures have been constructed/erected without Building Permit approval, and that the sale of certain items constitutes the establishment of an activity that is most similar to a retail sales establishment, all in violation of Zoning Ordinance provisions. Located at 11254 Leesburg Pi. on approx. 5.0 ac. of land zoned R-1. Dranesville District. Tax Map 11-2 ((1)) 22C. (Admin moved from 2/12/01 and 1/29/02)

Chairman DiGiulian noted that A 2001-DR-033 had been administratively moved to June 11, 2002, at 9:30 a.m.

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Page 345, April 9, 2002, (Tape 1), Scheduled case of:

9:30 A.M. CAPITAL COMMERCIAL PROPERTIES, INC., A 2001-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing the storage of vans and pick-up trucks belonging to Cox Communication on property in the C-6 District and that such use is deemed to be a storage yard which is in violation of Par. 5 of Sec. 2-302 of the Zoning Ordinance. Located at 6459 Edsall Rd. on approx. 13.82 ac. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) 7D. (Admin moved from 1/29/02 and 2/5/02)

Chairman DiGiulian noted that A 2001-MA-034 had been administratively moved to May 21, 2002, at 9:30 a.m.

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Approval of April 2, 2002 Resolutions

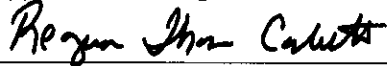
Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:32 a.m.

Minutes by: Regina Thorn Corbett

Approved on: August 6, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 16, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel; and John Ribble.

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

Page 347, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. JAMES B. VELTRI, VC 2002-PR-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.3 ft. from side lot line. Located at 3703 Waples Crest Ct. on approx. 2.21 ac. of land zoned R-1. Providence District. Tax Map 46-4 ((12)) 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. James Veltri, 3705 Waples Crest Court, Oakton, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck to be located 6.3 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 13.7 feet was requested.

Mr. Veltri presented the variance request as outlined in the statement of justification submitted with the application. He stated that the front of the house was located in close proximity to the flood plain; therefore, a variance was needed to construct the deck.

There was discussion between the Board and Mr. Veltri with regard to several other design and location options for the construction of the deck. The Board suggested that the deck could be adequately constructed 10 feet from the side property line. Mr. Veltri contended that he needed the deck to be located 6.3 feet from the side property line to accommodate the construction of a hot tub on top of the deck. He informed the Board that there was a new home being constructed on the adjacent property and it would be located approximately 200 feet away from his property.

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

Mr. Hammack stated that he felt 6.3 feet was too close to the side lot line and the deck could be constructed farther from the side lot line than what was proposed. He said that the home on the adjacent property had not been constructed and there was no way to clearly know how far it would be located from the property in question.

Mr. Hammack moved to approve-in-part VC 2002-PR-012 for the deck to be located 10 feet from the side lot line. Mr. Pammel seconded the motion, which carried by a vote of 7-0. The approval was contingent on the applicant's submission of a revised plat within 30-days reflecting the alterations to the location of the deck as requested by the Board.

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Page 347, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. FAUSTO A. PERINA, SP 2002-MA-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 dwelling to remain 9.9 ft. from side lot line. Located at 6625 Barrett Rd. on approx. 10,270 sq. ft. of land zoned R-3. Mason District. Tax Map 50-4 ((20)) 151.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frances Perina, 6625 Barrett Road, Falls Church, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit a

dwelling to remain 9.9 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 2.1 feet was requested.

Ms. Perine presented the special permit request as outlined in the statement of justification submitted with the application. She stated that they had constructed the addition to the dwelling themselves and had assumed in error that the property line began at their neighbors fence and that was where they took the side yard measurements from. She said that the error was made in good faith and it would be a great hardship for them to tear down the addition because the construction was almost completed.

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

Mr. Pammel stated that the applicants should have had the County double-check their measurements from the beginning.

Mr. Pammel moved to approve SP 2002-MA-005 for the reasons stated in the Resolution.

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### COUNTY OF FAIRFAX, VIRGINIA

#### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FAUSTO A. PERINA, SP 2002-MA-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 dwelling to remain 9.9 ft. from side lot line. Located at 6625 Barrett Rd. on approx. 10,270 sq. ft. of land zoned R-3. Mason District. Tax Map 50-4 ((20)) 151. 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 16, 2002; 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 Larry N. Scartz, dated January 16, 2002, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 24, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 349, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL C. BRANDLAND, VC 2002-SP-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.3 ft. from side lot line. Located at 5231 Gunpowder Rd. on approx. 1.43 ac. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((10)) 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. Michael C. Brandland, 5231 Gunpowder Road, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck to be located 6.3 feet from the side lot line. The Zoning Ordinance required a minimum side yard of 20 feet; therefore, a variance of 13.7 feet was requested.

Mr. Brandland presented the variance request as outlined in the statement of justification submitted with the application. He stated that the home was situated at an angle on the property due to the location of the septic field. He explained that he had worked with the builder to locate the entrance of the deck on the side of the home and moved the seating area so the widest point was away from the narrowest point of the lot. He said that he had full neighborhood support. He requested a waiver of the 8-day waiting period.

Mr. Hart asked if the deck was on the ground or raised. Mr. Brandland replied that it was a raised deck that was constructed to flow with the design of the house. Mr. Hart asked if the applicant could move the farthest point of the deck in from the property line. Mr. Brandland explained that the portion of the deck in question was bumped out to provide room for the access doors from the dining room area of the house.

Mr. Brandland informed the Board that the existing home on the property directly behind his was located on the lefthand side of the lot. He said that the property was extremely large and was well screened.

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

Mr. Hart stated that the applicant had worked with the builder to request the smallest variance possible and that the home on the adjacent property had already been constructed and was in excess of 140 feet away from the subject property.

Mr. Hart moved to approve VC 2002-SP-035 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL C. BRANDLAND, VC 2002-SP-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.3 ft. from side lot line. Located at 5231 Gunpowder Rd. on approx. 1.43 ac. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((10)) 5. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 16, 20 02; 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 the granting of a variance.
3. The lot is long and narrow; the house is placed at an angle to the lot lines and almost to the edge of the minimum yard.
4. The rear corner of the house is 20.5 feet from what is functionally the rear yard and there is very little room for a deck.
5. The existing home on the adjacent lot is in excess of 140 feet away from the property in question.
6. The proposed variance would have no negative impact on the surrounding properties.

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

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

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

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

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

1. This variance is approved for the location of the deck shown on the plat prepared by Walter L. Phillips, Incorporated, dated March 5, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Ribble seconded the motion, which carried by a vote of 4-3. Ms. Gibb, Mr. Hammack, and Mr. Pammel voted against the motion. Mr. Ribble moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 16, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 351, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. JENNIFER L. WERTH, VC 02-L-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.8 ft. from side lot line. Located at 6412 Briarmoor La. on approx. 20,002 sq. ft. of land zoned R-1. Lee District. Tax Map 81-3 ((9)) 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. Jennifer Werth, 6412 Briarmoor Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition consisting of a garage enclosure of an existing carport and shed to be located 15.8 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 4.2 feet was requested.

Ms. Werth presented the variance request as outlined in the statement of justification submitted with the application. She submitted a photograph of the carport and said that it was an eyesore. She said that the neighbors were in support of the application. She informed the Board that the proposed garage would not go outside the footprint of the existing carport. She requested a waiver of the 8-day waiting period.

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

Mr. Ribble moved to approve VC 02-L-009 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JENNIFER L. WERTH, VC 02-L-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.8 ft. from side lot line. Located at 6412 Briarmoor La. on approx. 20,002 sq. ft. of land zoned R-1. Lee District. Tax Map 81-3 ((9)) 35. 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 16, 2002; 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 the granting of a variance.
3. The house was built in the 1950's to the right side of the lot.

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

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

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

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

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



1. This variance is approved for the location of a garage addition, shown on the plat prepared by Laura L. Scott, dated November 7, 2001, as revised through December 3, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the votes.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 16, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 353, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. LORD FAIRFAX, L.L.C., VC 2002-PR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.9 ft. from rear lot line. Located at 8760 Cedar Meadow Ct. on approx. 9,583 sq. ft. of land zoned R-4. Providence District. Tax Map 49-1 ((26)) 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. Sara Kroll, 8569-E Sudley Road, Manassas, Virginia, replied that it was.

Mr. Hart made a disclosure that he felt would not affect his participation in the hearing.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling to be located 11.9 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 13.1 feet was requested.

Ms. Kroll, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. She explained that the applicant had purchased the property based on an approved GDP showing a building area of 60 X 51 feet and during the engineering process the County required the storm water management pond to be designed to contain the 500 year storm event. She said this reduced the building envelope on the property to 52 X 29 feet and other significant layout modifications were not able to be considered because the GDP was proffered. She informed the Board that the proposed dwelling would be greater than 100 feet from the nearest dwelling and 68 feet from the subdivision boundary and separated by open space.

Mr. Pammel asked who would maintain Outlot B. Ms. Kroll replied that the owners of Lot 7 would be responsible for the maintenance of Outlot B.

Mr. Hart suggested the possibility of reversing the position of the house on the property. Ms. Kroll explained that the applicant had entertained that option but it was not possible because the narrow lot could not accommodate the additional space required for the garage.

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

Ms. Gibb stated that she was in support of the application because the applicants had no control over the design change of the stormwater detention pond.

Mr. Pammel stated that he would be more inclined to approve the application with the implementation of Mr. Hart's suggestion of reversing the home on the property.

Mr. Hammack stated that was not in favor of approving applications that contained outlots. He stated that he would still support the application.

Mr. Hart stated that he was not in support of the application and that he would prefer the home to be reversed on the lot to result in a side yard variance as opposed to the creation of an outlet.

Ms. Gibb moved to approve VC 02-L-009. Mr. Ribble seconded the motion, which carried by a vote of 5-1. Mr. Hart voted against the motion, and Mr. Kelley was not present for the vote.

**A RECONSIDERATION REQUEST WAS GRANTED ON APRIL 23, 2002. THE HEARING WAS SCHEDULED FOR JUNE 4, 2002.**

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Page 354 April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE DOLL COMPANY, VC 01-L-199 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 15.0 ft. and to permit construction of a 6.0 ft. high fence in the front yard. Located at 6001 South Van Dorn St. on approx. 35,557 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 39. (Continued from 2/19/02) (Def. From 3/12/02)

Chairman DiGiulian stated that there was a request to withdraw the application. Mr. Ribble moved to withdraw VC 01-L-199. Ms. Gibb and 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 354, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. JENIFER W. PICKETT DUFFY, VC 02-H-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 95.91 ft. Located at 9101 Old Courthouse Rd. on approx. 1.27 ac. of land zoned R-2. Hunter Mill District. Tax Map 28-4 ((1)) 41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark G. Jenkins, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to subdivide one lot into two lots and Lot 2 was proposed to have a lot width of 95.91 feet. The Zoning Ordinance requires a minimum lot width of 100 feet and Lot 1 was proposed to contain 25,722 square feet while Lot 2 was proposed to contain 25,815 square feet, which resulted in a density of 1.57 dwelling units per acre for this application. The two proposed lots would be accessed from a shared driveway to Old Courthouse Road.

Mark Jenkins, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the density for the proposed subdivision would result in a density of 1.57, which was below the maximum allowed by the County. He explained that the proposed subdivision lacked the required lot width amount by approximately 4.0 feet for one of the lots.

Mr. Jenkins explained that a potential solution of the problem would be to construct a public street into the right-of-way however; that was not permitted under the Virginia Department of Transportation (VDOT) standards because a project of three or fewer houses was not eligible for acceptance into the secondary

road system. He informed the Board that the proposed subdivision provided a large amount of tree save areas.

Mr. Hart asked if the applicant was in agreement with the proposed development conditions. Mr. Jenkins answered affirmatively.

Chairman DiGiulian called for speakers.

Philip Kenney, 1731 Killarney Court, came forward to speak in opposition of the application. He stated that there was no undue hardship and the property could easily be developed with one single family home. He explained that his property was directly to the rear of the property in question and the proposed variance would have tremendous detrimental impacts on his property value.

Robert Rothstein, 9029 Old Courthouse Road, came forward to speak in opposition of the application. He stated that his home was adjacent to the property in question. He reiterated that the home could be developed with a single-family dwelling. He said that the applicant was attempting to sell the property at the highest attainable price.

Christine Kenney, 1731 Killarney Court, came forward to speak in opposition of the application. She stated that she had known of the possibility that a home could be constructed on the lot behind her house at some point, but the prospect of two very large houses with one being 16 feet from her property line was unacceptable. She alleged that the developer had acted in an unprofessional and threatening manor with her in the past.

Kathy Russiello, 9104 Westerholme Way, came forward to speak in opposition of the application. She stated that the variance request would be out of character with the neighborhood and it would negatively affect the use and value of her property.

Lisa Nyhill, no address given for record, came forward to speak in opposition of the application. She reiterated the comments from the previous speakers and requested that the Board deny the application.

Sue Larr, no address given for record, came forward to speak in opposition of the application. She reiterated the comments from the previous speakers.

Mr. Jenkins, in his rebuttal, stated that the property was unique in the fact that it was the only property large enough in the subdivision to be subdivided into two lots. He reiterated that the variance request was minimal. He stated that he was unaware of any personality conflicts between the developer and the citizens and suggested that the focus be on the variance request. He requested that the Board approve the variance request.

Ms. Gibb asked for a clear answer from Mr. Jenkins that under VDOT standards a public road could not be constructed into the subdivision. Mr. Jenkins replied that was correct.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the testimony from the surrounding property owners and Mr. Jenkins convinced him that the application did not meet the prescribed standards for the granting of a variance.

Mr. Pammel moved to deny VC 02-H-005. Mr. Hart seconded the motion, which carried by a vote of 4-1. Chairman DiGiulian voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refiling an application. Mr. Ribble and Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were not present for the votes.

**A RECONSIDERATION REQUEST WAS GRANTED ON APRIL 30, 2002. THE HEARING WAS SCHEDULED FOR JUNE 11, 2002.**

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Page 356, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. D.R. HORTON, INC., VC 01-V-200 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 11.0 ft. from a floodplain and 29.8 ft. from front lot line. Located at 5410 Grist Mill Woods Way on approx. 25,629 sq. ft. of land zoned R-2, HC and HD. Mt. Vernon District. Tax Map 109-2 ((8)) 19. (Continued from 2/19/02)

9:00 A.M. D.R. HORTON, INC., VC 01-V-201 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 28.7 ft. from front lot line. Located at 5411 Grist Mill Woods Way on approx. 23,047 sq. ft. of land zoned R-2 and HD. Mt. Vernon District. Tax Map 109-2 ((8)) 20. (Continued from 2/19/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patrick Via, 8221 Old Courthouse Road, Suite 300, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, stated that the applications were heard on February 19, 2002, which the applicant at that time requested variances to permit construction of a dwelling on each lot to be located 6.7 feet for Lot 19 and 4.4 feet for Lot 20 from the edge of a flood plain. The minimum distance requirement for a dwelling from a flood plain is 15 feet; therefore, variances of 8.3 feet for Lot 19 and 10.6 feet for Lot 20 were requested for the proposed dwellings. The BZA asked that the applicant reconsider the variance request and consider moving the dwellings a greater distance from the floodplain. The public hearing was continued to April 16, 2002. The applicant submitted a revised plat dated March 5, 2002, which proposed new locations for both of the dwellings. The proposal placed the dwellings closer to the cul-de-sac, which lessened the requests for variances of the distance to the edge of a flood plain. This created the need for an additional variance of the distance of the proposed dwelling to the front lot line for Lot 19. The Zoning Ordinance requires a minimum front yard requirement of 35 feet. The applicant requested to construct the dwelling 29.8 feet from the front lot line and 11.0 feet from the edge of a floodplain; therefore, variances of 5.2 feet from the minimum front yard requirement and 4.0 feet from the edge of a floodplain were requested for Lot 19. The proposal for Lot 20 placed the dwelling closer to the cul-de-sac which eliminated the request for a variance of the distance to the edge of a flood plain. It created the need for a variance of the distance of the proposed dwelling to the front lot line. The applicant proposed to construct the dwelling 28.7 feet from the front lot line; therefore, a variance of 6.3 feet from the minimum front yard requirement was requested for Lot 20.

Mr. Via, agent for the applicant, explained that the applicants abided by the Board's request and moved both of the dwellings a greater distance from the flood plain. He said that Lot 19 still required a variance from the edge of the floodplain because the Public Facilities Manual required a set back from the sanitary sewer to allow room to perform necessary maintenance without causing damage to the proposed dwelling. The proposal for Lot 20 placed the dwelling closer to the cul-de-sac which eliminated the request for a variance of the distance to the edge of a flood plain. It created the need for a variance of the distance of the proposed dwelling to the front lot line. The applicant proposed to construct the dwelling 28.7 feet from the front lot line; therefore, a variance of 6.3 feet from the minimum front yard requirement was requested for Lot 20. He explained that Lot 20 no longer required a variance from the edge of the floodplain and instead needed a front yard variance.

Chairman DiGiulian called for speakers.

James Hayes, no address given for the record, came forward to speak in support of the application. He informed the Board that he was a prospective buyer of the proposed home on Lot 19. He stated that the proposed homes would be in character with the neighborhood.

Gregory Hague, no address given for the record, came forward to speak in support of the application. He stated that he lived in the area and was in support of the applications.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 01-V-200 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

D.R. HORTON, INC., VC 01-V-200 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 11.0 ft. from a floodplain and 29.8 ft. from front lot line. Located at 5410 Grist Mill Woods Way on approx. 25,629 sq. ft. of land zoned R-2, HC and HD. Mt. Vernon District. Tax Map 109-2 ((8)) 19. (Continued from 2/19/02) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 16, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is located on a cul-de-sac with much of the area on the wrong side of the flood plain line.
4. The front yard is very narrow compared to the rest of the lot.
5. The lot contains extreme topographical conditions.
6. The application has improved since the original submission due to the relocation of the home toward the front of the lot and farther away from the flood plain.
7. There will be no adverse impact on the neighboring lots.
8. There is no neighborhood opposition.

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

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

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

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

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

1. This variance is approved for the location of a dwelling as shown on the plat prepared by Paul B. Johnson, dated November 2, 2000, as revised through March 5, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. 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 April 24, 2002. This date shall be deemed to be the final approval date of this variance.

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Mr. Hart moved to approve VC 01-V-201 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

D.R. HORTON, INC., VC 01-V-201 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 28.7 ft. from front lot line. Located at 5411 Grist Mill Woods Way on approx. 23,047 sq. ft. of land zoned R-2 and HD. Mt. Vernon District. Tax Map 109-2 ((8)) 20. (Continued from 2/19/02) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 16, 2002; and

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

1. The applicants are the owners of the land.
2. The lot is heavily constrained by the topography and configuration of a narrow and small front yard, a slope, and much of the area being located in a flood plain.
3. A large piece of land was taken out of the rear yard causing a rear set back restraint.
4. The application has improved since the original submission due to the relocation of the home toward the front of the lot and as a result, the variance from the flood plain set back is no longer required.
5. There will be no adverse impact on the neighboring lots.

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

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

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

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

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

1. This variance is approved for the location of a dwelling as shown on the plat prepared by Paul B. Johnson, dated November 2, 2000, as revised through March 5, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Ribble seconded the motion, which carried by a vote of 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 April 24, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 359, April 16, 2002 (Tape 1), Scheduled case of:

9:00 A.M. H. BRADFORD GLASSMAN, VC 02-V-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.2 ft. from front lot line. Located at 6428 Potomac

Ave. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 31. (Admin. moved from 3/26/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bradford Glassman, 6428 Potomac Avenue, 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 deck to be located 5.2 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, a variance of 18.8 feet was requested.

Mr. Glassman presented the variance request as outlined in the statement of justification submitted with the application. He requested that the Board waive the 8-day waiting period.

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

Mr. Ribble moved to approve VC 02-V-006 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

H. BRADFORD GLASSMAN, VC 02-V-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.2 ft. from front lot line. Located at 6428 Potomac Ave. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 31. (Admin. moved from 3/26/02) 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 16, 2002; and

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

1. The applicant is the owner of the land.
2. The applicant's statement of justification and testimony indicated compliance with the required standards for the granting of a variance.
3. The lot contains double front yard requirements.
4. The lot is exceptionally narrow.

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

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



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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of a deck as shown on the plat prepared by George M. O'Quinn, dated, December 17, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the votes.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 16, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 361, April 16, 2002 (Tape 1), Scheduled case of:

9:30 A.M. BX AUTO CENTER, LLC, A 2001-MA-036, A 2001-MA-037, A 2001-MA-038, A 2001-MA-039, A 2001-MA-040 Appls. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing tenants to operate Vehicle Light and/or Major Service Establishments without Special Exception approval and without valid Non - Residential Use Permits, as well as junk yards/storage yards, all in violation of Zoning Ordinance provisions. Located at 5723-C, 5723-D, 5723-E and 5723-F Center La. on approx. 44,544 sq. ft. of land zoned C-8, SC, HC and CRD. Mason District. Tax Map 61-2 ((20)) 10. (Admin. moved from 2/5/02)

Mr. Hart made a disclosure but felt that it would not affect his ability to participate in the hearing.

Maggie Stehman explained that the appellant's attorney had requested a deferral.

Marc Busman, agent for the appellant, explained that the appellant had made a good faith effort to resolve

Page 362, April 16, 2002, (Tape 1), BX AUTO CENTER, LLC, A 2001-MA-036, A 2001-MA-037, A 2001-MA-038, A 2001-MA-039, A 2001-MA-040, continued from Page 361

the violations on the property in the past month. He said that the two businesses which were the source of most of the complaints had been identified and the appellant was prepared to give them eviction notices as they were at the end of their leases. Mr. Busman said that the remaining five businesses would also be served eviction notices at the appropriate times. He explained that the appellant would need to remodel the buildings to be able to provide adequate accommodations for non-auto businesses to move in. He requested an initial deferral with the understanding that further deferrals might be necessary to facilitate continuing resolution of the violations.

Ms. Stehman stated that staff supported an initial two-month deferral to ensure that there was a good faith effort and then would entertain a further deferral assuming that good progress was made.

Chairman DiGiulian called for speakers to the issue of deferral.

Mark O'Johnson, President, Sunset Manor Civic Association, came forward to speak to the issue of deferral. He stated that the residents had been dealing with the effects of the businesses that were operating in violation for many years and were not in support of a deferral. He said that there were elderly people in the community that could not be outside in their yards because of the heavy paint fumes from the businesses. He submitted a letter of opposition from another neighbor.

Ann Shoemaker, no address given for the record, came forward to speak to the issue of deferral. She stated that her property bordered one of the businesses in violation by the name of Total Auto Repair. She requested that the Board not allow the deferrals to continue for a long period of time.

Mr. Pammel suggested that the citizens contact OSHA and report the businesses that were omitting paint fumes into the air as it was a Federal violation.

Ms. Gibb asked for the names of the two businesses that were due to be served eviction notices. Mr. Busman answered Express Auto and Skyline Auto Body.

Mr. Busman reiterated that the appellant was prepared to move to terminate two of the five leases that were operating in violation.

Mr. Pammel stated that all of the five businesses were in violation of the Zoning Ordinance and that took precedence over all of the leases. He stated that he was not in support of a lengthy deferral and he suggested that the appellant move forth to terminate all of the leases and vacate the businesses that were in violation.

Mr. Busman stated that the appellant was willing to vacate those businesses within a reasonable amount of time.

Ms. Gibb moved to defer A 2001-MA-037-037-038-039 and 040 to June 18, 2002, at 9:30 a.m., with the understanding that the appellant was moving to have all of the subject properties vacated and would give immediate notice to Express Auto and Skyline Auto Body. 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 362, April 16, 2002 (Tape 1), After Agenda Item:

Approval of November 27, 2001 Minutes

Mr. Hammack moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 362, April 16, 2002 (Tape 1), After Agenda Item:

Additional Time Request  
Brenda Luwis and Satyendra Shrivastava, VC 98-D-008

Page 363 April 16, 2002, (Tape 1), After Agenda Item, continued from Page 362

Mr. Pammel moved to approve the Additional Time Request for VC 98-D-008 for an additional twelve months to April 13, 2003. 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 363 April 16, 2002 (Tape 1), After Agenda Item:

Approval of April 9, 2002 Resolutions

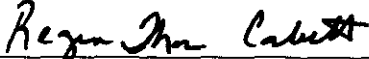
Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Lori M. Mallam

Approved on: August 13, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 23, 2002. The following Board Members were present: John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; James Pammel; John Ribble; and Robert Kelley.

Chairman DiGiulian called the meeting to order at 9:00 a.m.

Mr. Pammel briefly discussed the reconsideration of VC 2002-PR-013, Lord Fairfax, LLC, due to discovery by research that perhaps the action vote was inconsistent with parts of development conditions and rezoning.

Mr. Pammel made a motion to reconsider VC 2002-PR-013. Ms. Gibb seconded the motion, which carried with a vote of 7-0. The application was scheduled for June 4, 2002, at 9:00 a.m.

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Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no other Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 365 April 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT L. SMITH AND DR. KILE B. BAKER, SP 2002-BR-007 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.5 ft. from side lot line. Located at 11210 Belmont Dr. on approx. 20,500 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 67-2 ((2)) 3A. (Concurrent with VCA 93-B-113).

9:00 A.M. ROBERT L. SMITH AND DR. KILE B. BAKER, VCA 93-B-113 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line. Located at 11210 Belmont Dr. on approx. 20,500 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 67-2 ((2)) 3A. (Concurrent with SP 2002-BR-007).

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. Smith, 11210 Belmont Drive, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought approval of a special permit to permit reduction to minimum yard requirements based on an error in building location to permit an addition to remain 5.5 feet from the north side lot line. She said variance application VC 93-B-113 was originally granted on December 22, 1993, to permit the construction of an addition 6.0 feet from the side lot line; therefore, a variance of 0.5 feet was requested.

Ms. Josiah stated that the applicant also sought approval for a variance to allow the construction of a garage to be added to the dwelling which was proposed to be located 6.6 feet from the north side lot line. She said the Ordinance required a minimum of 20 feet; therefore, a variance of 13.4 feet was required.

Mr. Smith presented the special permit request and variance amendment request as outlined in the statement of justification submitted with the application. He said that nine years ago when the original variance had been granted, there had been plans to add a storage closet, which was to be attached to the house. He said that when the contractor came to build the closet, he changed the dimensions of it, which caused it to be 6 inches over the line that had previously been granted in a variance by the Board.

Mr. Smith stated that when they bought the house one year ago, they wanted to eliminate the carport. He said it was not attractive nor functional as it was open on all three sides. He said that they would like to construct an enclosed garage in the place of the existing carport which they had planned to remove. He said that they had architectural plans drawn up for the garage, and it would be in harmony with the rest of the house.

Mr. Pammel clarified that the original variance and work related to it had been done by a prior owner and Mr. Smith replied that was correct. He said the storage closet would stay in its present location, and the only real change was that the garage would replace the carport.

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

Mr. Pammel moved to approve SP 2002-BR-007 for the reasons noted in the Resolution

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT L. SMITH AND DR. KILE B. BAKER, SP 2002-BR-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.5 ft. from side lot line. Located at 11210 Belmont Dr. on approx. 20,500 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 67-2 ((2)) 3A. (Concurrent with VCA 93-B-113). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 2002; 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:

Page 367 April 23, 2002, (Tape 1), ROBERT L. SMITH AND DR. KILE B. BAKER, SP 2002-BR-007 and ROBERT L. SMITH AND DR. KILE B. BAKER, VCA 93-B-113, continued from Page 366

1. This Special Permit is approved for the location of the addition shown on the plat prepared by Alexandria Surveys International, LLC, dated December 11, 2001, as revised through January 5, 2002, submitted with this application and is not transferable to other land.

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

Mr. Hart seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VCA 93-B-113 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT L. SMITH AND DR. KILE B. BAKER, VCA 93-B-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line. Located at 11210 Belmont Dr. on approx. 20,500 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 67-2 ((2)) 3A. (Concurrent with SP 2002-BR-007). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The proposed garage has a greater dimension from the side lot line than the current structure.
4. The encroachment to the side lot line is less than the existing encroachment.

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

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

the same vicinity.

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Alexandria Surveys International, LLC, dated December 11, 2001, as revised through January 5, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Hart seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 368 April 23, 2002, (Tape 1), Scheduled case of:

- 9:00 A.M. NANCY H. FOOR, VC 2002-MV-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 1105 Arcturus La. on approx. 14,729 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((14)) (A) 25. (Concurrent with SP 2002-MV-008).
- 9:00 A.M. NANCY H. FOOR, SP 2002-MV-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.7 ft. and accessory structure 0.0 ft. from side lot line. Located at 1105 Arcturus La. on approx. 14,729 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((14)) (A) 25. (Concurrent with VC 2002-MV-015).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Foor, 1105 Arcturus Lane, Alexandria, Virginia, replied



that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought a special permit for a reduction to the minimum yard requirements based on an error in building location to allow an addition to remain 7.7 feet from the eastern side lot line and to allow a shed to remain 0.8 feet from the western side lot line. She said the minimum side yard of 15 feet was required by the Ordinance; therefore, a modification of 7.3 feet was required for the addition and a modification of 14.2 feet was required for the shed.

Ms. Stanfield stated that the applicant was also requesting a variance to construct a one story addition to be located 10 feet from the eastern side lot line. She said the Ordinance required 15 feet for the side yard; therefore, a variance of 5 feet was required for the addition.

Ms. Foor presented the special permit request and variance request as outlined in the statement of justification submitted with the application. She stated that she wanted to put an addition on the side of the house which would be a room for her aging mother. She said she was also trying to correct some errors made by prior owners. She said the previous owner had enclosed the carport and made it into a garage without getting any permits. She said the shed in her yard was built prior to 1967 and was on the property line.

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

Mr. Hart moved to approve VC 2002-MV-015 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY H. FOOR, VC 2002-MV-015 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of an addition 10.0 ft. from side lot line. Located at 1105 Arcturus La. on approx. 14,729 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((14)) (A) 25. (Concurrent with SP 2002-MV-008). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 2002; 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 addition should not have a negative impact on adjacent property owners.
4. The location appears to be the logical place for the addition.
5. The two lots together only have a lot width of 100 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 an addition, as shown on the plat prepared by Ned A. Marshall, dated December 11, 2001, as revised through February 5, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 2002. This date shall be deemed to be the final approval date of this variance.

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Mr. Hart moved to approve SP 2002-MV-008 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

NANCY H. FOOR, SP 2002-MV-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.7 ft. and accessory structure 0.8 ft. from side lot line. Located at 1105 Arcturus La. on approx. 14,729 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((14)) (A) 25. (Concurrent with VC 2002-MV-015). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 2002; 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 and an accessory structure, as shown on the plat prepared by Ned A. Marshall, dated December 11, 2001, as revised through February 5, 2002, 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

Page 372, April 23, 2002, (Tape 1), NANCY H. FOOR, VC 2002-MV-015 and NANCY H. FOOR, SP 2002-MV-008, continued from Page 371

with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 372, April 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MEGAN & LAWRENCE MEGALE, SP 2002-SU-009 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of addition 13.0 ft. from side lot line. Located at 15097 Wetherburn Dr. on approx. 13,248 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 242.

Chairman DiGiulian stated that this case had been administratively moved to May 21, 2002.

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Page 372, April 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY L. AND JANET S. PILLER, VC 2002-SU-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 13147 Applegrove La. on approx. 9,830 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (15) 111.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Greg and Janet Piller, 13147 Applegrove Lane, Oak Hill, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicants had requested a variance to permit construction of an addition of a screened porch to be located 18.0 feet from the rear lot line. He said the minimum yard requirement was 25 feet; therefore, a variance of 7.0 feet was requested. Mr. Bernal stated that there were no proffers that would cover the application as presented.

Mr. Pillar presented the variance request as outlined in the statement of justification submitted with the application. He stated that they wanted to build a screened porch onto the back of their house. He said that the shape of the back yard was unusual and the rear lot line was slanted, which made the backyard very shallow. He stated that the back yard was the most logical place to add a screened porch. He said they had spoken with all the immediate neighbors and they had signed a petition in support of the application. He stated that they also had the homeowners association's approval.

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

Mr. Ribble moved to approve VC 2002-SU-014 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGORY L. AND JANET S. PILLER, VC 2002-SU-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 13147 Applegrove La. on approx. 9,830 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (15) 111. Mr. Ribble

moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 23, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The rear yard is exceptionally shallow.
4. There is an exceptional shape to the lot.
5. The location of the house causes the need for a variance.
6. The proposed area is the most logical place for a screened porch.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Brian W. Smith, dated January 16, 2002, submitted with this application and is not transferable to other land.

Page 374 April 23, 2002, (Tape 1), GREGORY L. AND JANET S. PILLER, VC 2002-SU-014, continued from Page 373

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 374, April 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF CAPITAL WORSHIP CENTER, SP 02-Y-001 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and a child care center. Located at 7000 Ordway Rd. on approx. 9.92 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 71 pt., 72, 73 and 76B. (Administratively moved from 4/9/02)

Chairman DiGiulian stated that this case had been administratively moved to May 28, 2002, per the applicant's request.

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Page 374, April 23, 2002, (Tape 1), Scheduled case of:

9:30 A.M. SANG T. KIM AND BONG Y. KIM, A 2001-MA-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a building addition which was constructed on the appellants' property violates setback and floor area ratio requirements for the C-5 District and was constructed without valid site plan approval or a valid Building Permit, all in violation of Zoning Ordinance provisions. Located at 8716 7/30/02 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Def. from 5/22/01, 7/10/01, 10/23/01) (Admin. moved from 1/8/02)

Chairman DiGiulian stated that this case had been administratively moved to July 30, 2002, per the applicant's request.

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Chairman DiGiulian stated that it was too early to call the appeal cases and went to the After Agenda Items.

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Page 374, April 23, 2002, (Tape 1), After Agenda Items:

Request for Reconsideration  
Lord Fairfax, LLC, VC 2002-PR-013

Chairman DiGiulian stated that the Board had discussed this case at the beginning of the meeting. There was a brief discussion to clarify which members voted yea/nay in this case last week.

Page 375, April 23, 2002, (Tape 1), After Agenda Items, continued from Page 374

Mr. Ribble moved to reconsider VC 2002-PR-013, Lord Fairfax, LLC. Mr. Pammel seconded the motion, which carried by a 7-0 vote. It was decided that VC 2002-PR-013 would be heard again on June 4, 2002, at 9:00 a.m.

Mr. Pammel stated that the previous Resolution should reflect the two who voted nay on that case were Mr. Hart and Mr. Pammel.

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Page 375, April 23, 2002, (Tape 1), After Agenda Items:

Request for Reconsideration  
Jenifer W. Pickett Duffy, VC 02-H-005

Mr. Hart asked staff if they had read the letter from Mark Jenkins, Agent for Ms. Duffy, and what did they think.

The Board briefly discussed the letter and information. The Board decided to defer the reconsideration for one week in order to have time to review the new documents that had been submitted.

Mr. Hart moved to defer the Reconsideration until April 30, 2002. Mr. Ribble seconded the motion, which carried by a 7-0 vote.

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Page 375, April 23, 2002, (Tape 1), After Agenda Items:

Approval of April 16, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions with the exception of VC 2002-PR-013, Lord Fairfax, LLC, and VC 02-H-005, Jenifer W. Pickett Duffy. Mr. Ribble seconded the motion, which carried by a 7-0 vote.

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Page 375, April 23, 2002, (Tape 1), Scheduled case of:

9:30 A.M.      LILIANE P. AND GEORGE J. KNAKMUHS, A 1999-SP-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a business (Clifton Pottery) without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. Located at 7601 Clifton Rd. on approx. 91,476 sq. ft. of land zoned R-C, C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 12. (Def. From 8/1/00, 1/2/01, 6/26/01 and 12/18/01 for decision only)

Chairman DiGiulian called for appeal application A 1999-SP-020. He stated that his office had prepared the site plans for the subject property and he would not participate in the hearing.

Vice Chairman Ribble stated that the case was for decision only and asked William Shoup, Assistant Zoning Administrator, to present his case.

Mr. Shoup stated that Susan Epstein, Assistant to the Assistant Zoning Administrator, would present the case.

Ms. Epstien stated that the appeal pertained to a violation which cited the Knackmus' for operating a business without an approved site plan or non-residential use permit (Non-Rup) on April 7, 1999. She said that at the last public hearing on December 18, 2001, the Knackmus' stated that they were trying to record a conservation easement to satisfy the storm water management requirement which was the last remaining issue to be resolved before the minor site plan could be approved. She said the Knackmus' also indicated that they needed approval from their mortgage company before they could record the easments and, as a result, the minor site plan had been placed on administrative hold by the Department of Public Works and

Environmental Services (DPWES). Ms. Epstein said that on March 28, 2002, DPWES denied the minor site plan because of the lack of due diligence by the appellants and it had been returned to the engineer.

Ms. Epstein said the Notice of Violation at issue, in the appeal, had gone unresolved for over three years and it had been about nine and a half years since the last site plan and NonRup expired. She said that the appellants were no closer to resolving the violation as when the Notice was first issued on April 7, 1999, and that they had continued to operate in violation of the Zoning Ordinance. She said staff believed that the appeal should not be delayed any further.

Barry Bedford, representative for Mr. and Mrs. Knackmuhs, stated that he was present to report on the status of the conservation easement. He said the appellants believed that the issue had been resolved last summer when the County indicated that the conservation easement had satisfied the County's requirements. He said that a letter dated April 2, 2001, from Mr. Ayoubi of DPWES said that their Review Division had no objection to a conservation easment for compliance with Best Management Practices if an alternative measure was provided and the easement could be easily vacated. Mr. Bedford said that the mortgage company for the Knackmuhs' would not consent to the easement, as it represented a substantial portion of the property that the mortgage company held as collateral for their loan.

Mr. Bedford stated that the store operated on the portion of the property that was zoned C-5, whereas, the conservation easement was zoned RC under the Zoning Ordinance. He said there was nothing that could be done within the easement area as it did not consistute the minimum lot size required within the RC area, and therefore, no use had been made in that area. Mr. Bedford stated that the Knackmuhs' were elderly and the property had been designated to be their source of retirement. He said they did not have limitless resources to devote to this and their current plan was to continue with the sale and marketing of the property.

Ms. Gibb stated that the case had been going on for a long time, but she could remember that early in the case there had been testimony that the inventory was going to be sold. She said within the following year or so the appellants stated that the property was unsaleable and that all prospective buyers had been turned off by the prospect of having to obtain a site plan. She asked what was different now.

Mr. Bedford stated that he was not familiar with that set of circumstances and had not gotten involved until the issue with the conservation easement arose. He said he was hired to draft the conservation easement and get it through the County Attorney's office. He stated that he knew the Knackmuhs had previous offers made on their property but did not know any more history than that. He introduced Greg Tomlin, the listing real estate agent for the subject property.

Greg Tomlin of Jobin Realty stated that he did not think anything had changed since the original listing. He said the property originally had been on the market for almost two years before it had been taken off. He said it was put back on the market in February of 2002 and there had been a couple of offers, and one was on the table now, pending the review board.

Mr. Hammack asked Mr. Tomlin if the property was being sold as a business in the name of Clifton Pottery Factory. Mr. Tomlin replied that it was to be sold as RC-5 property and a purchaser would have to apply for a permit through the County for whatever use they wanted.

Mr. Hammack asked if the Knackmuhs' had continued to operate the pottery business out of their residence. Mr. Tomlin replied that he thought that was correct.

Mr. Hart stated that he understood that over the last couple of years, one of the basis for the deferral was for the appellant to exhaust the existing inventory. He asked if that had transpired or if things had been restocked. Mr. Bedford replied that Mrs. Knackmuhs had advised him that the inventory was not being restocked and they were still trying to sell the original existing inventory. He explained that the type of merchandise sold by Clifton Pottery did not move rapidly and that some pieces had even been donated to help reduce the stock.

Mr. Hart asked Ms. Epstein if there were any other issues pending with the subject property. Ms. Epstein replied that they had received a copy of a letter dated April 18, 2002, from one of the directors at DPWES addressed to the Knackmuhs'.



Ms. Epstein stated that the letter addressed the fact that the street light issue had not yet been addressed on the minor site plan and the conservation easement shown on the minor site plan had not satisfied the Best Management Practices for phosphorous removal.

Jane Kelsey came forward to state that the engineer revised the site plan to upgrade the one street light prior to December 2001. She said the site plan had been submitted to the County and she felt that issue had probably inadvertently been overlooked.

Ms. Gibb asked Mr. Bedford whether the Knackmuhs' actually wanted to sell their property or were they interested in continuing the pursuit of a minor site plan. Mr. Bedford replied that the appellants had made the definitive decision to sell the subject property if a buyer could be found. He said that their interest in pursuing the minor site plan was to eliminate the stigma of operating a business unlawfully.

Mr. Hammack stated that the case had been deferred five months ago in order to allow for the final issues to be taken care of, but found that a whole new set of issues had come up since then. He said that the Board had given the Knackmuhs' time to sell down their inventory and to terminate their business; however, they still operated an ongoing business. He said the violations continued while the appellants decided what to do or not to do for their own personal reasons. Mr. Hammack stated that the decision of the Board should not influence the sale of the subject property because the purchaser would still be subject to the same legalities under the existing zoning laws.

Mr. Hammack made a motion to uphold the Zoning Administrators determination. Mr. Pammel seconded the motion, which carried by a 6-0-1 vote. Chairman DiGiulian abstained from the vote.

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Page 317, April 23, 2002, (Tape 1 and 2), Scheduled case of:

9:30 A.M. ROBERT C. AND MARY A. COLE, A 2001-PR-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are operating a retail sales establishment on property in the R-1 District which is not a permitted use under Zoning Ordinance provisions. Located at 7129 Leesburg Pi. on approx. 2.20 ac. of land zoned R-1. Providence District. Tax Map 40-3 ((1)) 99. (Cont'd. From 3/12/02)

9:30 A.M. ROBERT C. AND MARY A. COLE, A 2001-PR-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are operating a plant nursery without site plan approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 7125 Leesburg Pi. on approx. 37,207 sq. ft. of land zoned C-8. Providence District. Tax Map 40-3 ((1)) 102. (Cont'd From 3/12/02)

Vice Chairman Ribble called appeal application A 2001-PR-049, which was to be heard concurrently with A 2001-PR-048.

Mr. Hart disclosed that his firm had a different case with the Cole's attorney, but he believed he could participate in the hearing.

William Shoup, Deputy Zoning Administrator, stated that the appeal had been heard by the Board on March 12, 2002, and at that time, the BZA had requested additional information. He said in his memorandum of April 15, 2002, the information had been provided along with some elaboration on the staff's position. Mr. Shoup stated that Zoning Administration did not believe there were any non-conforming rights to the uses on the subject property.

Mr. Hart asked Mr. Shoup to briefly review the photographs of the subject property and point out the individual aspects of each photograph that staff felt were important for the Board to take notice. Daryl Varney, Assistant to the Deputy Zoning Administrator, presented the photographs, giving time frames and descriptions of each.

Mr. Pammel asked what the reason was that staff had not pursued enforcement after the expiration of the

waiver in 1983. Mr. Shoup replied that it appeared that after the first waiver was issued for two years, the enforcement case had been closed out and had never been followed-up.

David Lasso, Venable, Batjer and Howard, Agent, 8010 Tower Crescent Drive, Vienna, Virginia, stated that they also had done more research. He submitted a letter from William Caldwell and Mary Hill who had lived close to Sam's since 1993. He said the letter stated that Mr. Caldwell and Ms. Hill had not observed any changes on the property since 1993. He said he had also submitted a letter from Bradley Coleman, who was not present because of his age. He said Mr. Coleman's letter stated that his father began a business of Coleman's Lawn Mower Shop next to the subject property back in the 1940's. He said the letter recalled that during the 1950's and 1960's, after the elder Mr. Coleman closed his business, the family had bought many items from the nursery that was operating on Lot 102 and Lot 99. Mr. Lasso stated that Mr. Coleman recalled that he specifically remembered buying a birdbath from Edwin Shide from Lot 99.

Mr. Lasso stated that Gene Hooper was present, and he had bought Lot 102 around 1960. He said around that time, Mr. Sewell approached Mr. Hooper and asked if he could operate a plant nursery/wayside stand in that location, as was common during that time period. Mr. Lasso stated that Mr. Hooper would testify that Lot 102 had been used entirely as a plant nursery and wayside stand.

Mr. Hooper came forward to validate in detail the information Mr. Lasso had given. He stated that Lot 102 had been operating its nursery business since the early 1960's. He said there had been a smaller, similar operation on Lot 99, which he bought a few years later. Mr. Lasso stated that the house located on Lot 99 had been in such disrepair that it could not be fixed. He said it had not been used as a residence, but as a similar nursery throughout the years.

Mr. Lasso stated that if the burden was on the Coles, he believed that they had produced more than adequate evidence to show that these properties had been lawfully used in their current status since the early 1960's. He said that the need for site plans came into effect in 1964, and were specifically for start-up businesses and not for any businesses that were already operational.

Mr. Lasso spoke of a Virginia legal case, *Nolton vs. Browning Ferris*. He said it stated that Virginia protected the use of a property, as long as there was no change on it, from when it had been established. He said the non-conforming status changed only if the use of the land changed dramatically.

Mr. Pammel clarified that the subject property had been zoned R-1 back in 1959, and the type of use, such as a nursery, had been permitted by right during that time. Mr. Shoup replied that was correct, but it had to be used as an accessory to a dwelling, and that was where he felt the Coles case was in violation.

Mr. Shoup stated that they did not dispute what was on the subject property in 1962, but the history that had been presented. He said there had not been any mention of a plant stand on the subject property in 1964, and noted that the 1964 rezoning had been very controversial. Mr. Shoup stated that the wayside stand could have been an accessory to the dwelling, but the staff had shown that the dwelling no longer appeared to exist shortly after the 1964 rezoning.

Mr. Shoup stated that the dwelling had become vacant and had been in disrepair for an unknown amount of time, which lead to another issue. He said that to get to a non-conforming use, the property would have had to be lawfully established and sales activity would have had to continue, uninterrupted, on the property since 1962. He said the appellant had not presented evidence that the property had a lawful use during all of that time.

Mr. Shoup stated that even if this nursery started as a wayside stand on Lot 102, it had now grown substantially from a small fruit and vegetable stand to a full blown plant nursery, which needed to get site plan approval.

Mr. Shoup briefly discussed the *Nolton* case and how it related to several of the issues at hand. He said that in the *Nolton* case, it had stated that the burden of proof for a non-conforming use was on the appellant or applicant who sought the determination. He stated that he did not believe the Cole's had presented sufficient evidence of this.

Mr. Shoup said the Nolton case also addressed natural expansion from use and significant changes in the character of the business. He said that if Sam's had started as a permitted accessory plant stand or wayside stand, it had now grown into a full blown, commercial plant nursery operation, which was the same set of circumstances as in the Nolton case, and for that reason should not be allowed to continue on the subject property without site plan approval.

Mr. Pammel clarified that Mr. Shoup's position on this wayside stand use was that, even if it had existed and obtained the status of a legally non-conforming use, that it had been contrary to the provision of the State law regarding a non-conforming use. He stated that this business over the years had expanded significantly, and that it clearly stated in the Ordinance under State law that, legally, non-conforming uses were not permitted to expand or enlarge. Mr. Shoup replied that was correct.

Mr. Pammel stated that in 1978, with the current Ordinance in effect, there had been a provision for the expansion of any non-conforming use that would require a special exception. He asked if Mr. Shoup had any documentation that there had been additional expansion beyond or past the 1978 date that would have required the appellant to have the need to obtain a special exception through the Board of Supervisors (BOS). Mr. Shoup replied that would be applicable to Lot 99, which was residentially zoned. Mr. Shoup stated that Lot 102 was commercially zoned, so the 1978 Ordinance did not apply to it in the same way as the issue of Lot 99.

Mr. Shoup said there might have been some plantings on the subject properties that had not shown up in the aerial photos. He stated that dealing with non-conforming grandfathered plant nurseries in the past; he had often seen distinctive planting beds in aerial photographs, but that none had been seen prior to the 1978 aerial photo. Mr. Shoup said that even if there had been some plantings, one could say that there was a grandfathered plant nursery that operated on Lot 99 between 1984 and 1986. He said that now there had been a greenhouse added on that property.

Mr. Shoup addressed man-made items that had been sold on the property since the time it was in Mr. Shide's possession. He said he did not believe that had been legal because it had been consistently stated that a grandfathered nursery was only allowed to sell plant material, but not man-made items. He stated that the photos, which had been presented earlier, showed the display of the statuary currently on the subject property and he believed that the Cole's needed to apply for a special exception approval. Mr. Shoup stated that recently, the Zoning Ordinance had eased up on items that could be sold at plant nurseries, and that the BOS could now approve these through the special exception process, which indicated that they had not been legal before.

Ms. Gibb and Mr. Shoup briefly discussed the rationale for special exceptions with business expansion and how it affected adjacent properties.

Mr. Lasso stated that Lot 99, which was much larger than Lot 102, was primarily for plant growth. He said that in the early 1960's one could sell potted plants and that they could continue to do that. He said he believed that it wasn't until the new Ordinance in 1978 when the County tried to impose the Ordinance not to sell any man-made items from that point forward. He said that some man-made items were customary and had an accessory use to a plant nursery, as was the case on Lot 99.

Mr. Hart asked to see the 1959 Ordinance. Mr. Shoup stated that he did not have it with him, but would have it faxed over for the Board. Mr. Hart clarified that it was Mr. Shoup's position that the wayside stand has to be an accessory to the dwelling on Lot 102.

Mr. Shoup replied that was correct. He said as it was in the current Ordinance, a wayside stand back then was only allowed as an accessory use.

Chairman DiGiulian asked if there was anyone to speak to the appeal.

Ramon Pompei came forward to speak in support of the appeal. He spoke of the positive role Sam's had played in the community. He said it added to the beauty of the area and he tried to keep his property as beautiful as possible. He stated that Fairfax County needed more small businesses like Sam's.

Robert Bailey, (no given address) came forward to support the appeal. He stated that he lived one mile from the fruit stand and felt that Sam's was the last oasis among the rampant development in Fairfax County.

Mr. Kelley stated that he had not been present for the first meeting in March, but had familiarized himself enough with the information and had heard enough that he felt he could participate fully.

Mr. Kelley asked for short recess while awaiting the fax from Mr. Shoup's office.

The Board recessed at 10:56 a.m. and reconvened at 11:29 a.m.

Mr. Shoup stated that he had received a copy of the provisions from the 1959 Ordinance regarding wayside stands. He said he had been somewhat mistaken regarding the provision. He said the Ordinance actually read wayside stands were allowed for the sale of agricultural products grown in the immediate vicinity, or products of any home occupation conducted on the same property. He said the only other reference found in the 1959 Ordinance was that wayside stands had a setback requirement that was actually 25 feet less than the typical requirement.

Mr. Shoup stated that the wayside stand issue did not change staff's basic position. He said that the small wayside stand had grown into a full-blown, plant/nursery business operation with additional structures that were quite substantial in size compared to what might have existed back in the early 1960's. He said staff's position remained unchanged with respect to Lot 102 and that they believed a site plan approval was needed for the changes that had occurred. He said they also believed that Lot 99 needed special exception approval as well.

Mr. Lasso stated in his rebuttal that the 1959 Ordinance showed that the wayside stand aspect of the operation on Lot 102 was permitted as use by right, without a site plan when it was first established in 1962. He said that although it did not show, he believe the first permitted use in the residential areas had been agricultural, which allowed green house, nursery stock, etc. He said those were the two types of uses that were critical and they were permitted by right, without site plan, at the time Lot 102 was put into use by Mr. Sewell.

Mr. Lasso said that Lot 99 had been residentially zoned in 1962. He said that was when Mr. Shide had began his operation, perhaps coinciding with what he saw was going on next door. He said Lot 99 continued to be zoned residential, so it was a non-conforming use. He said he thought that all of the evidence clearly showed that the lots were non-conforming in use, and that they were basic in character, which had been the test. He said that the character of the lots had not changed over the last 40 years. He stated that the only permanent structure on either lot were the two houses that remained on Lot 99 that were being used as potting sheds.

Mr. Lasso stated that the structures that had been referred to were plastic covered green houses with poles stuck in the ground without any foundation. He said that looking back to the 1960's as to whether or not the greenhouses would have been permanent or not, it gave them their non-conforming use, and they had been established lawfully, and should be allowed to stay.

Mr. Lasso stated that there was no purpose in making the Coles go through the expense of a site plan for Lot 102 when it was not required by either law or reason. He said that Lot 99 was also a non-conforming use that ought to be allowed to continue.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved that the Zoning Administrator be overturned in both cases. She said, in reference to Lot 102, she found that the lot was first used as a plant nursery in 1962, when the lot was zoned residential and therefore, no site plan was required at the time. She said she thought that there has been significant testimony and letters written which indicated that the lot had been in continuous use up to the present time as a nursery since 1962. She said that even though the lot was re-zoned to commercial in 1964, the law of a site plan was not applicable to the non-conforming use then in existence.

She said she believed that the appellant did have a burden to provide proof, and she felt that the appellant

had met that burden. She said it did not have to be beyond a reasonable doubt, but there had to be very credible evidence which indicated the facts and it was the County's obligation to rebut that and she did not believe that they had. She said she found the aerial photos to be non-conclusive. Ms. Gibb stated that she did not believe there had been a significant expansion or enlargement of the nursery to indicate that the lots essential character had been changed.

Ms. Gibb stated that it was her motion that the appeal for Lot 102 be upheld.

Mr. Ribble seconded the motion.

Mr. Hart stated he opposed the motion. He said the Zoning Administrator and the BZA had a difficult task to interpret the various Ordinances and to deal with them consistently. He said that there was evidence that there had been significant expansion of the operation which changed the character of the use from what once was a wayside stand in the 1960's to the present business. He said he believed that the Zoning Administrator was correct on Lot 102.

Chairman DiGiulian called for a vote, which carried by a vote of 4-3, and the Zoning Administrator's determination was overturned.

Ms. Gibb addressed A 2001-PR-049. She stated that the appellant had presented convincing evidence that the Lot 99 was first used as a plant nursery and had continued the use since 1962, when the lot was zoned residential. She stated that in the copy of the 1959 Zoning Ordinance, which referred to wayside stands for agricultural products grown in the immediate vicinity, it had been allowed in the residential zone. She said she believed that agricultural use was allowed in this residential zoning.

Ms. Gibb said the lot has been in continual use as a plant nursery, and did not believe the pictures shown today indicated how much of Lot 99 was used to grow plants. She said the central character of the lot was a nursery with some man-made and accessory items that had been lawfully established before the Zoning Administrator began requiring a special exception to locate a nursery in a residential zone.

Ms. Gibb moved to overturn the Zoning Administrator's determination.

Mr. Ribble seconded the motion.

Mr. Hart stated that he opposed the motion. He stated that even if the wayside stand was established early on, he had a problem with the sale of man-made objects in a residential district. He said he believed that the character of the use had changed and therefore, opposed to the motion.

Mr. Pammel stated that he supported Mr. Hart's comments. He said that since 1978 the lot had expanded and required a special exception. He said the property had not been transferred to the current property owner until after 1978.

Ms. Gibb amended the motion to say that the sale of man-made items would be by special exception only, but the nursery use would be allowed.

Mr. Ribble accepted the amended motion.

The vote carried by a vote of 6-1, and the Zoning Administrator's determination was overturned. Mr. Hart voted against the motion.

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Mr. Pammel stated that for the record, Mr. McCormack was going to get a copy of the letter the BZA had received from the Justice Department.

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

Minutes by: Judith A. Gobbi

Approved on: December 17, 2002

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John P. DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 30, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; and James Pammel. John Ribble was absent from the meeting.

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

Page 383 April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LYMAN S. & DEE A. BUTTERFIELD, VC 2002-PR-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.9 ft. from front lot line. Located at 8111 Bright Meadows La. on approx. 12,165 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((18)) 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. Lyman and Dee Butterfield, 8111 Bright Meadows Lane, Dunn Loring, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story garage addition to be located 25.9 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 4.1 feet was requested.

Mr. Butterfield presented the variance request as outlined in the statement of justification submitted with the application. He said the request was for additional living space. Mr. Butterfield stated that there was no other location for the addition. He presented drawings of the proposed addition and photographs of similar additions in the neighborhood. Mr. Butterfield submitted letters in support from adjacent neighbors.

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

Mr. Hammack moved to approve VC 2002-PR-016 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LYMAN S. & DEE A. BUTTERFIELD, VC 2002-PR-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.9 ft. from front lot line. Located at 8111 Bright Meadows La. on approx. 12,165 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((18)) 10. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; and

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

1. The applicants are the owners of the land.
2. The applicants satisfied the required standards for a variance.
3. The lot is narrow with constraints in the rear that preclude developing in that area.
4. There is no other location for the addition.
5. The variance request is minimal.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the location of addition as shown on the plat prepared by George M. O'Quinn, dated, January 31, 2002, as revised through February 11, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 385, April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BRADFORD WHITE & ASSOCIATES, LC, VC 2002-SU-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 37 having a lot width of 12.0 ft. Located at 12711 Oxon Rd. on approx. 2.50 ac. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((18)) 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. Lori Greenlief, Agent, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to subdivide one lot into two lots, with proposed Lot 37 having a lot width of 12.0 feet. A minimum lot width of 150 feet is required by the Zoning Ordinance for the R-1 District. Lot 37 was proposed to contain 55,089 square feet while Lot 38 was proposed to contain 53,811 square feet, which resulted in a density of 0.84 dwelling units per acre. The two proposed lots would be accessed from a shared driveway to Oxon Road.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She said a variance request for a 3-lot subdivision on the subject property was denied because of major problems. Ms. Greenlief stated that the citizens believed that the subdivision into 3 lots was not appropriate for the area for density and capability reasons. She said the citizens believed that the lot should not be divided with more than 2 lots. Ms. Greenlief said the applicant met with the neighbors again and they were requesting a subdivision into 2 lots. She submitted a petition of 62 signatures of neighbors in support of the application. Ms. Greenlief stated that the applicant met the required standards for a variance. She said the lot was long and narrow and if the variance were denied it would produce an undue hardship on the applicant. Ms. Greenlief stated that the variance request would not change the character of the neighborhood.

Mr. Hammack asked who owned Outlot B. Ms. Greenlief replied that it was owned by the owners of Lot 33 and contained a storm drainage easement.

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

Mr. Pammel moved to approve VC 2002-SU-026 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRADFORD WHITE & ASSOCIATES, LC, VC 2002-SU-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 37 having a lot width of 12.0 ft. Located at 12711 Oxon Rd. on approx. 2.50 ac. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((18)) 36. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

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

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

1. This variance is approved for the subdivision of Lot 36 as shown on the plat prepared by Hamid M. Tehrani, dated January 2, 2002. 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. Prior to additional land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to additional land disturbing activities for construction, a pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. Any utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible.
3. A single driveway shall provide access to both lots. The driveway shall meet the requirements of the Public Facilities Manual (PFM). Adequate sight distance shall be provided as determined by Virginia Department of Transportation (VDOT) and the Fairfax County Office of Transportation standards. The applicant shall clear any vegetation adjacent to the existing paved surface in order to provide adequate sight distance along Oxon Road.
4. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as determined by DPWES.

Page 387, April 30, 2002, (Tape 1), BRADFORD WHITE & ASSOCIATES, LC, VC 2002-SU-026, continued from Page 386

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 387, April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, VC 02-P-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 1.08 ft. and parking area to remain 6.0 ft. from front lot line of a corner lot. Located at 2855 Annandale Rd. on approx. 13.17 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((1)) 47, 50, 51; 50-4 ((6)) 11, 12; 50-4 ((10)) 1 and 50-4 ((11)) 1. (In association with SEA 90-P-050 and 2232-P02-2).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cynthia Yanni, Department of Housing and Community Development, replied that it was.

William Mayland, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an existing structure to remain 1.08 feet from the front lot line and the proposed parking area to be located 6.0 feet from a front lot of a corner lot. A minimum front yard of 25 feet is required for the existing building; therefore, a variance of 23.92 feet was requested. A minimum front yard of 10 feet is required for the parking area; therefore, a variance of 4.0 feet was requested.

Ms. Yanni presented the variance request as outlined in the statement of justification submitted with the application.

Mr. Pammel asked if the variance was necessary because right of way was dedicated after the existing building was constructed. Mr. Mayland replied yes.

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

Mr. Hart moved to approve VC 02-P-001 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, VC 02-P-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 1.08 ft. and parking area to remain 6.0 ft. from front lot line of a corner lot. Located at 2855 Annandale Rd. on approx. 13.17 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((1)) 47, 50, 51; 50-4 ((6)) 11, 12; 50-4 ((10)) 1 and 50-4 ((11)) 1. (In association with SEA 90-P-050 and 2232-P02-2). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; 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 building has been on site for many years and because of the later dedication of the public street, the variance request is more of a technicality.
4. The request will not significantly impact the surrounding area.
5. The special exception amendment and the 2232 have already been approved.
6. The variance will be in harmony with the intended spirit and purpose of the Ordinance and not contrary to the public interest.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the James Lee Community Center and parking lot as shown on the plat prepared by Vika, Inc., dated November 21, 2001, as revised through March 15, 2002, 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,

Page 389 April 30, 2002, (Tape 1), FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, VC 02-P-001, continued from Page 388

thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 389, April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BRUCE W. REYNOLDS, VC 2002-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.3 ft. from side lot line. Located at 6804 Hampshire Rd. on approx. 36,042 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((5)) 1A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a family room addition to the dwelling, to be located 17.3 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 2.7 feet was requested.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She said the addition would replace an existing deck and patio. Ms. Strobel stated that the property was acquired in good faith. She said the lot was narrow with steep topography. Ms. Strobel stated that the addition was compatible with the neighborhood. She submitted 5 letters in support of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002-DR-018 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRUCE W. REYNOLDS, VC 2002-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.3 ft. from side lot line. Located at 6804 Hampshire Rd. on approx. 36,042 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((5)) 1A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

2. The applicant's testimony and statement of justification indicated compliance with the required standards for a variance.
3. The lot is narrow with steep topography in the rear of the lot.
4. The variance request is fairly modest.
5. The side of the property is well screened with extensive vegetation.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 International, LLC, dated January 24, 2002, as revised through February 11, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 391, April 30, 2002, (Tape 1), BRUCE W. REYNOLDS, VC 2002-DR-018, continued from Page 390

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 391, April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SALO FAJER, VC 2002-HM-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. from rear lot line. Located at 13100 Mares Neck La. on approx. 13,404 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 25-3 ((14)) 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. Salo Fajer, 13100 Mares Neck Lane, Oak Hill, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a screened porch addition to the dwelling, to be located 19.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6.0 feet was requested.

Mr. Fajer presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was shallow and there were other neighbors with similar screened porches in the neighborhood. Mr. Fajer said the addition would not be visible to the neighbors and he would maintain the quality of the neighborhood.

Mr. Hart asked if the existing evergreens would be removed. Mr. Fajer replied no.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 2002-HM-019 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SALO FAJER, VC 2002-HM-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. from rear lot line. Located at 13100 Mares Neck La. on approx. 13,404 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 25-3 ((14)) 3. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant's testimony and statement of justification indicated compliance with the required standards for a variance.
3. The request is for a modest 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 screen porch addition shown on the plat prepared by Land Design Consultants, dated January, 2002, and signed January 14, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 393 April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BRIAN AND LAURA CANNON MADDIX, VC 2002-MV-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 3.02 ft. from rear lot line. Located at 9226 Lee Masey Dr. on approx. 3,042 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-4 ((20)) (J) 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. Laura Maddix, 9226 Lee Masey drive, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a deck, to be located 3.02 feet from the rear lot line. A minimum rear yard of 6.1 feet is required; therefore, a variance of 1.98 feet was requested.

Ms. Maddix presented the variance request as outlined in the statement of justification submitted with the application. She said the lot was unusually shaped and backed to homeowners association open space. Ms. Maddix requested a waiver of the 8-day waiting period.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-MV-021 for the reasons noted in the Resolution.

Mr. Hart said he would support the motion because the lot was unique because the area to the right on the property was unusable.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN AND LAURA CANNON MADDIX, VC 2002-MV-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 3.02 ft. from rear lot line. Located at 9226 Lee Masey Dr. on approx. 3,042 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-4 ((20)) (J) 17. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The size of the deck has been reduced and the deck has been moved farther away from the property line than in the previous variance application.
3. The lot is small.
4. The variance sought is minimal.
5. The applicant satisfied the required standards for a variance.
6. The homeowner gets caught in this situation where the developer can add a deck as a matter of right, and the homeowner has to come in and request a variance.
7. The house is placed closer to the rear lot line than other homes in the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;

- C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the deck shown on the plat prepared by Bowman Consulting Group, dated as revised December 18, 2001, signed February 4, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. Ms. Gibb moved to waive the 8-day waiting period. Mr. Kelley seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Pammel were not present for the vote, and Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 394 April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. J.P. BREHONY/COMMONWEALTH HOUSING CORP., SP 2002-HM-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 20.7 ft. from rear lot line. Located at 1929 Beulah Rd. on approx. 22,687 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 38-2 ((67)) 1. (Admin moved from 5/7/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. J. P. Brehony, 8167 Boss Street, Vienna, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction in minimum yard requirements based on an error in building location to permit the dwelling to remain 20.7 feet from a rear lot line. A minimum 25-foot side yard is required; therefore, a modification of 4.3 feet was requested.

Mr. Brehony presented the request as outlined in the statement of justification submitted with the application. He said the builder made the mistake and the dwelling encroached onto school property.

Chairman DiGiulian asked Mr. Brehony if he had seen the letter in opposition. Mr. Brehony replied yes. He said the issues addressed in the letter dealt with the approved grading plans for the house and were not issues that could be resolved the BZA.

Chairman DiGiulian called for speakers.

Robert Erso, owner of the subject property, 1929 Beulah Road, came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2002-HM-010 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

J.P. BREHONY/COMMONWEALTH HOUSING CORP., SP 2002-HM-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 20.7 ft. from rear lot line. Located at 1929 Beulah Rd. on approx. 22,687 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 38-2 ((67)) 1. (Admin moved from 5/7/02) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; 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 396, April 30, 2002, (Tape 1), J.P. BREHONY/COMMONWEALTH HOUSING CORP., SP 2002-HM-010, continued from Page 395

- 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 Christopher Consultants, dated December 11, 2001, 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. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 396, April 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOHN R. & ANNA M. HALL, SP 2002-BR-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line. Located at 9936 Braddock Rd. on approx. 19,429 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-1 ((16)) 9. (admin moved from 6/4/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John and Anna Hall, 9936 Braddock Road, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction in minimum yard requirements based on an error in building location to permit a detached garage to remain 2.0 feet from a rear lot line. A minimum 19-foot rear yard is required; therefore, a modification of 17.0 feet was requested for the existing garage. The garage was also wholly located within a temporary grading and construction easement for the future road to be located on Outlot B. A memo from the Department of Transportation (DOT) was included in the Addendum, distributed to the BZA, stating that DOT could not support approval of the Special Permit due to the location of the garage within the easement. New plats reflecting the easement were submitted on Friday, April 26,

Page 397 April 30, 2002, (Tape 1), JOHN R. & ANNA M. HALL, SP 2002-BR-017, continued from Page 396

2002, and the proposed development conditions contained in Attachment 1 of the Addendum were modified accordingly. Ms. Josiah stated that representatives from the County Attorney's Office, Zoning Enforcement Branch, and the Department of Transportation were present to answer questions from the BZA.

Mr. Hart asked what was the Comprehensive Plan designation for Lots 5, 6, and 7, to the left on the tax map and Lots 9, 10, and 11 to the right on the tax map. Ms. Josiah stated that she believed that the Comprehensive Plan recommended consolidation of Lots 6, 7, and 10, which was the reason that the future road was proposed on Outlot B.

Mr. Hart asked for an explanation of the purpose of the future road on Outlot B. Angela Rodeheaver, Department of Transportation, stated that as part of the rezoning that occurred to the north of the subject property, RZ 95-B-021, the land area was set aside so that at some point should Parcels 5, 6, 7, 9, 10, and 11 redevelop, the road would provide access to those parcels.

Mr. Hart asked if the access would be instead of access to Braddock Road. Ms. Rodeheaver replied yes.

Mr. Hall presented the request as outlined in the statement of justification submitted with the application. He asked that the garage/storage facility remain 2.0 feet from the rear lot line. He said the builder of the Amanda Place subdivision needed a strip of their property for a dry pond drainage area. Mr. Hall said as a result of negotiations, the builder acquired ½ acre of his land that included a 15x16-foot storage barn in exchange for \$100,000 and the garage/storage facility that was built on the property to replace the previous storage barn. Mr. Hall stated that they later found that the garage was constructed on the property line and without a building permit. He said they tried to get the County to come out and perform inspections, to no avail. Mr. Hall said the builder moved the structure to where it currently sat. He said leaving the structure in its current location would not be any detriment to adjacent neighbors. Mr. Hall requested a waiver of the 8-day waiting period.

Mr. Hart asked whether Mr. Hall voluntarily participated in the rezoning. Mr. Hall replied yes. Mr. Hart asked if the applicants received payment. Mr. Hall replied yes.

Chairman DiGiulian called for speakers.

Florence Naeve, Chief of Staff, Supervisor Bulova's office, came forward to speak in opposition to the application. She said the applicants initiated all of the actions that led to their current situation. Ms. Naeve stated that if the applicant had not sold any of the property and had not joined in the rezoning, the lot would be large enough to support the structure that was built. She said the applicant was present for all of the meetings, signed the proffers, and sold a large part of his property for profit. Ms. Naeve said allowing the garage to remain would set a precedent in the neighborhood, because the applicant suffered from a self-imposed hardship and had built a structure that was not compatible with the neighborhood.

Ms. Gibb asked who owned Outlot B. Ms. Josiah replied that Outlot B was owned by the homeowner's association.

Mr. Hall stated in his rebuttal, that he did not build the garage but contracted with a builder to build it.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that this was an unusual situation. He said it was categorically different than the typical special permit application brought before the Board. Mr. Hart said he could not remember a situation where it was the applicant who created the physical constraints on the site. He said the owners acquired a large lot, participated in a rezoning, sold a portion of the property, gave up an outlot, and gave up certain easements. Mr. Hart said the applicant also proffered to a Generalized Development Plan that did not depict a structure and through somewhat confusing and somewhat disputed circumstances, a structure went in exactly in the easement and 2 feet from the outlot. Mr. Hart said if the applicant had not participated in the rezoning, none of the constraints would have applied.

He moved to deny SP 2002-BR-017 for the reasons noted in the Resolution.

Mr. Pammel stated that the testimony indicated that the applicant did not have the best advice, but the garage was located within an established easement and that could not be overlooked.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOHN R. & ANNA M. HALL, SP 2002-BR-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line. Located at 9936 Braddock Rd. on approx. 19,429 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-1 ((16)) 9. (admin moved from 6/4/02) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 30, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The application is unusual and categorically different from the typical special permit building in error application.
3. There has not been a recent special permit application where the applicant created the physical constraints on the site.
4. The applicants acquired a large lot that they owned for many years, participated in a rezoning, sold a portion of their property, gave up an outlot, and gave up certain easements.
5. The applicants proffered to a Generalized Development Plan that did not depict the structure and then through confusing and disputed circumstances, a structure went in the easement, 2 feet from the outlot.
6. If the applicants had not participated in the rezoning, none of the constraints would have applied.
7. The applicant's testimony indicated that they did not fully appreciate all of the consequences of the rezoning; however, they received monetary benefits and access to an interior subdivision in the rear of the property instead of access onto Braddock Road.
8. The applicants received \$18,000 in a settlement with the builder to address the garage issue.
9. A house with an existing 21-foot carport could probably be converted to a garage or roofed parking.
10. The application does not satisfy general standards 1-4 in Sect. 8-006 and items B, C, D, E, and F under Sect. 8-914.
11. It appears that several homes could be developed on either side of the subject lot in conformance with the Comprehensive Plan, requiring the development of the road on Outlot B.
12. The applicant did not present testimony indicating compliance with the required standards.
13. Staff has made a recommendation on this application, which is unusual.

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**.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2002.

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Page 399 April 30, 2002, (Tape 1), Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance provisions. Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on approx. 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and 11/27/01) (continued from 1/22/02)

Chairman DiGiulian gave a disclosure indicating that his office prepared the plats for the subject appeal. He recused himself from the public hearing.

Vice Chairman Hammack indicated that there was a letter from Mr. Dowdy requesting a continuance.

Mr. Dowdy stated that Mr. Sanders, attorney, requested a continuance because he was in Circuit Court. He said Mr. Cifuentes had done very little on the property and he did not know what was going to change. Mr. Dowdy said they had no access to the property.

William Shoup, Deputy Zoning Administrator, stated that they would like to dispose of the Cinder Bed Road cases as quickly as possible. He said he had spoken with Mr. Sanders who had indicated that there had been some clean up of the property. Mr. Shoup said that Mr. Sanders indicated that he was trying to explore the idea of obtaining easement rights to cross over and get to the property. He said staff would be willing to defer for 4 to 6 weeks.

Mr. Hart moved to defer A 2001-LE-023 to June 4, 2002, at 9:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian recused himself from the meeting, and Mr. Ribble was absent from the meeting.

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Page 399, April 30, 2002, (Tape 1), Scheduled case of:

9:30 A.M. JIMMIE AND MARGIE WALKER, A 2002-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a contractor's office and shop, storage yard, junk yard and a heavy equipment and specialized vehicle sale, rental and service establishment and that such activity has been established in violation of various Zoning Ordinance provisions. Located at 7801 Cinder Bed Rd. on approx. 1.06 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 20.

William Shoup, Deputy Zoning Administrator, indicated that there might be a deferral request.

William Arnold, Agent, came forward to request a deferral. He submitted photographs depicting that the property had been cleaned and no longer appeared to be a junkyard. Mr. Arnold stated that material and debris had been removed. He said a site plan had been filed to bring the property into compliance. Mr. Arnold stated that the applicant would also apply for a Proffered Condition Amendment. He said a business usage was allowed on the property and was consistent with the neighborhood. Mr. Arnold requested a continuance of 4 months to resolve the issues.

Mr. Pammel moved to continue A 2002-LE-001 to September 10, 2002, at 9:30 a.m.

Mr. Shoup stated that staff objected to the deferral request. He said the violations were proffer and Zoning Ordinance violations. Mr. Shoup said that it was staff's position that the Cinder Bed Road appeals go forward because it would be best to pursue resolution of the issue through consent decrees. He said the case should go forward as scheduled.

Mr. Pammel said he felt the appellant was working towards compliance and he would be comfortable continuing the appeal.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 400, April 30, 2002, (Tape 1), continued from Page 399

Mr. Hammack moved to that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

The Board recessed into Executive Session at 11:11 a.m. and reconvened at 12:16 p.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.

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Page 400, April 30, 2002, (Tape 1), After Agenda Item:

Approval of October 16, 2001 and January 15, 2002 Minutes

Mr. Hammack moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote, and Mr. Ribble was absent from the meeting.

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Page 400, April 30, 2002, (Tape 1), After Agenda Item:

Request for Reconsideration  
Jenifer W. Pickett Duffy, VC 02-H-005

Mark Jenkins, Agent, came forward stating that there was new information with regard to the history of the property that would justify reconsideration. He presented the information to the Board.

Mr. Hart moved to approve the Request for Reconsideration. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote, and Mr. Ribble was absent from the meeting.

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Page 400, April 30, 2002, (Tape 1), After Agenda Item:

Approval of April 23, 2002 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote, and Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

Minutes by: Regina Thorn Corbett

Approved on: August 13, 2002

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 7, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 401, May 7, 2002, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP AND LAURA ESKELAND, VC 2002-PR-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. and eave 5.6 ft. from side lot line. Located at 2426 Jackson Pkwy. on approx. 10,979 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 110.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philip Eskeland, 2426 Jackson Parkway, Vienna, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested approval of a variance to permit the construction of a garage addition to be located 8.1 feet from the side lot line with an eave approximately 6.0 feet wide located 5.6 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet and allows eaves to extend 3.0 feet into the minimum required yard; therefore, a variance of 3.9 feet was requested for the garage addition and a variance of 3.4 feet was requested for the eave.

Mr. Eskeland presented the variance request as outlined in the statement of justification submitted with the application. He stated that the Board had denied a previous request to construct a two-car garage and as a result they had scaled back the size of the proposed structure to a one-car garage. He explained that there would be room on the side of the garage for a second car to be parked with adequate shelter from the elements.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-PR-028 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

PHILIP AND LAURA ESKELAND, VC 2002-PR-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. and eave 5.6 ft. from side lot line. Located at 2426 Jackson Pkwy. on approx. 10,979 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((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 May 7, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The variance request has improved compared to the previous submission.
4. The lot is narrow.

5. The location of the house on the lot facilitated the need for the variance.
6. The variance requests are minimal and justifiable under the 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 garage, shown on the plat prepared by Scott Sterl, dated January 29, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 5-0-2. Ms. Gibb and Mr. Ribble abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 403, May 7, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BILL WILLIAMS, VC 2002-MA-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.4 ft. from rear lot line. Located at 3359 Roundtree Estates Ct. on approx. 10,179 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((38)) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Lenk, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an enclosed porch addition to be located 18.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 6.6 feet was requested.

Mr. Lenk, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He explained that the proposed structure would not be any closer to any of the property lines than what was currently existing. He stated that the layout of the home was taken into consideration and it would not be practical to locate the addition in any other area. He informed the Board that the home was located 70 feet from the front property line, which provided a minimal rear yard; therefore, a variance was needed in order to construct the addition.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-MA-022 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

BILL WILLIAMS, VC 2002-MA-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.4 ft. from rear lot line. Located at 3359 Roundtree Estates Ct. on approx. 10,179 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((38)) 9. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property is unusual because the home is situated approximately 70 feet from the front property line and approximately 25 feet from the rear lot line.
3. The situation of the dwelling on the lot precludes any improvements in the private area of the rear yard without requiring a variance.
4. The variance request is reasonable.
5. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the enclosed porch addition shown on the plat prepared by Alexandria Surveys International, LLC, dated January 31, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 405, May 7, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT A. ROWE AND LISA MARIE RAND ROWE, VC 2002-HM-020 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 2412 Carey La. on approx. 28,734 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 38-3 ((20)) 41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Rowe, 2412 Carey Lane, Vienna, Virginia, replied that it was.

Mr. Hart recused himself from the hearing.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit an existing 6-foot high 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 2.0 feet was requested.

Mr. Rowe presented the variance application as outlined in the statement of justification submitted with the application. He explained that he hired a company to install a fence for the purposes of providing safety for his family as well as his property because his home was located on Vale Road, which was a heavily traveled thoroughfare. He stated that there was a heavy amount of pedestrian foot traffic around his home as well. He said that before the construction of the fence, his property had been vandalized several times. He stated that in the time since the construction of the fence, there had only been one attempt to vandalize the property. He informed the Board that there was a large underground tunnel that ran under the road through his property and the fence would also provide personal liability protection. Mr. Rowe explained that upon retaining the fencing company it was his belief that the company would abide by all of the zoning laws with regard to the installation of the fence. He referred any questions regarding the construction of the fence to Brett Eagle, Armor Fence Company.

Brett Eagle, Armor Fence Company, explained that the fence was made of vinyl and cost the applicants over \$15,000. He urged the Board to approve the variance request.

Mr. Rowe acknowledged that there were several letters of opposition and contended that the neighbors had initially indicated that they had no objection to the fence height but they did not like the white color. He said that one neighbor who submitted a letter in opposition had complimented him on the fence and suggested that he planned on having a fence made of the same material on his property. He stated that another opposing neighbor alleged that the fence caused a sight distance issue and that he was willing to move the fence back 4.0 feet to meet the 30-foot site distance requirement. He contended that the issue wasn't sight distance, but instead drivers now had to come to a complete stop at the stop sign instead of rolling through it now that the fence was installed. He said that one neighbor had mentioned that there was a covenant regarding fence color but he had never been informed of one and was unable to find any information to confirm that any such covenant existed.

Mr. Ribble asked the applicant if his contract with the fencing company addressed who was to contact the County to check the zoning requirements. Mr. Rowe explained that the sales representative from the fencing company indicated that the maximum fence height in the County was 6.0 feet. He said that he was not sure if the contract specifically pointed out who would contact the County.

Mr. Hammack asked staff what the required distance was from the street corner to the fence. Ms. Josiah replied that for a lot having an interior angle of 90 degrees or more, the points should be 30 feet from the property lines extended. She illustrated where the fence should be placed in order to be in compliance with the Ordinance.

Jay Fisher, agent for the Armor Fence and Deck Company, stated that there were no sight distance issues with regard to the fence. He explained that the true height of the fence was 5.3 inches including the decorative lattice. He said that there were privacy and safety concerns because Vale Road was a heavily traveled road both by vehicles and pedestrians. He stated that there was a large drainage culvert on the adjacent property, which created a safety hazard and the fence provided the applicants with liability protection.

Mr. Ribble asked if the fencing company normally took the responsibility of contacting the County to check the zoning laws. Mr. Fisher replied that the sales representative for the fencing company had contacted the County; however, he did not disclose that the fence was to be located in what was believed to be the front yard of a corner lot.

Chairman DiGiulian called for speakers.

Emmons Larson, 2440 Carey Lane, came forward to speak. He stated that he was in support of the fence height but not the color choice.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the white coloring compounded the issue of the height violation. He suggested that the neighborhood contact their Supervisor to address the increased traffic in the area.

Mr. Ribble moved to deny VC 2002-HM-020 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. ROWE AND LISA MARIE RAND ROWE, VC 2002-HM-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 2412 Carey La. on approx. 28,734 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 38-3 ((20)) 41. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have a form of recourse with the company who installed the fence and denial of the variance will force the company to abide by the zoning laws in the future.
3. The applicants did not meet the required standards for the granting of a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

Page 407, May 7, 2002, (Tape 1), ROBERT A. ROWE AND LISA MARIE RAND ROWE, VC 2002-HM-020, continued from Page 406

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 2002.

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Page 407 May 7, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., SP 2002-MA-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 2.1 ft. from side lot line and 5.4 ft. from rear lot line. Located at 6447 Holyoke Dr. on approx. 9,367 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 30.

This case was administratively moved to June 11, 2002.

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Page 407 May 7, 2002, (Tape 1 and 2), Scheduled case of:

9:00 A.M. H. JAY SPIEGEL, VC 2002-MV-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 0.1 ft. from a floodplain. Located at 8778 Thomas J. Stockton Pkwy. on approx. 21,696 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((1)) 10A pt. and 111-1 ((16)) A 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. H. Jay Spiegel, 8778 Thomas J. Stockton Parkway, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a dwelling to be located 0.1 foot from the edge of a floodplain. The minimum distance required from a floodplain is 15 feet; therefore, a variance of 14.9 feet was requested. He explained that the issues related to the Resource Protection Area (RPA) and the floodplain were addressed by the Department of Public Works and Environmental Services (DPWES), and the applicant had been corresponding with DPWES regarding those issues.

Mr. Spiegel presented the variance request as outlined in the statement of justification. He explained that

the first habitable floor of the proposed dwelling would be no lower than 12 feet above sea level and that all of the land disturbing aspects of the proposed development would be at least 5 feet from the floodplain and on the street side of a natural berm. He said that the natural berm had an elevation of 12 to 14 feet and would protect the floodplain and the adjacent creek. He stated that there were three or four locations where deep holes would be dug to permit the construction of concrete pilings to support overhangs of upper floors of the proposed dwelling but none of the upper floors or concrete pilings would overhang or intrude into the floodplain. He maintained that the home would be of a size commensurate with the neighborhood, would provide the 30 foot set back to the front of the property, would be 100 feet from the home on the right and over 250 feet from the house on the left. Mr. Spiegel said that his application was of a smaller scale than the D.R. Horton application, which the Board had recently approved for building near a floodplain. He suggested that the County did not treat each case similarly because he was required to obtain more approvals than the representatives for the D.R. Horton application. He stated that he was unaware of any environmental concerns from the County regarding the proposed development because he had obtained approval of a Water Quality Impact Assessment and a Resource Protection Area Exception. He said that all rainwater falling on the proposed dwelling as well as his existing home would be conveyed into newly created infiltration trenches.

Mr. Spiegel explained that he had consistently kept the neighbors and the Stratford Landing Citizens Association fully apprised of every aspect of the proposal. He provided the Board with several examples of how he had worked with the neighbors to make the proposal beneficial to the neighborhood. He rebutted several issues that were brought forth in a letter of opposition by explaining that the Water Quality Impact Assessment and the Resource Protection Area Exception approvals satisfied those concerns.

Ms. Gibb stated that the purpose of the Zoning Ordinance provision that prohibited construction within a certain proximity to the floodplain was to prevent intrusion into the floodplain. She asked the applicant how he could ensure that the floodplain would not be disturbed by construction equipment while digging the footers. Mr. Spiegel explained that the footers could be dug from the street side and that they were to be located approximately 5 to 8 feet from the top of the natural berm. He said that appropriate steps would be taken to ensure that there would be no encroachment into the floodplain.

Mr. Hart asked the applicant what the berm consisted of and where it was located. Mr. Spiegel replied that the berm was a natural occurring feature that already existed. He illustrated the location of the berm with regard to the foundation of the proposed dwelling. He explained that two infiltration trenches would be created to convey all of the rainwater off of the property.

Mr. Hart asked what the footprint of a house would be if it were built by-right on the property. Mr. Spiegel replied that the area between the 30 foot set back and that 15 foot buffer from the floodplain would not be enough to support a home.

Mr. Hart noted that the D.R. Horton application had been deferred several times and the end result was that the applicants had relocated the proposed construct away from the floodplain buffer and closer to the front of the property. He asked the applicant if it would be possible to relocate the proposed dwelling more toward the front of the property. Mr. Spiegel replied that he was trying to accommodate the neighbor across the street with regard to their view and to negate the need for a variance to the 30 foot set back requirement for the front of the property.

Chairman DiGiulian called for speakers.

Steve Chaconas, 8619 Camden Street, came forward to speak in support of the application. He stated that he was a member of a committee that was established by the Stratford Landing Citizens Association to oversee any development along the creek and to ensure that all of the County guidelines were followed. He explained that he was a professional fisherman and he had been fishing in the creek for 35 years. He said that the applicant had maintained his property appropriately to protect against erosion and the applicant had committed himself to protecting the water quality in the creek. He stated that he was in support of the application.

Dave Timmons, Stockton Parkway, came forward to speak in opposition of the application. He stated that his house would be approximately 200 feet from the proposed dwelling. He submitted a photograph of site for the proposed home. He suggested that the applicant was mainly concerned about the resale value of the



property as opposed to the preservation of the open space. He said that he was in favor keeping the property the way it currently existed because he was concerned that the granting of a variance would cause a precedent in the neighborhood and all of the existing open space would be built on.

Rick Edgerton, President, Stratford Landing Citizen's Association, came forward to speak. He explained that the Association neither supported nor opposed the application but asked that the Board vote on the merits of the case.

Lorenzo Menitee, 2409 Wittingham Boulevard, came forward to speak in opposition of the application. He stated that he owned the property directly across the street from the proposed dwelling. He explained that when he bought his house his realtor informed him that the property in question was not a buildable lot. He said that his home was small and the proposed dwelling would tower over his home by more than 10 feet and it would completely block his view of the water.

Don Krauss, 8604 Waterford Road, came forward to speak in opposition of the application. He stated that he was in opposition to the variance because he believed that the granting of a variance would cause precedence and place the remaining open space in the area in jeopardy. He submitted several photographs of open space in the area.

Sidney Smith, Stratford Landing, came forward to speak in opposition of the application. She explained that she lived approximately one half mile from the proposed development. She informed the Board that the applicant had plans to sell the property to a builder who would construct the dwelling. She said she was concerned that the builder would not honor any of the promises and assurances that were made by Mr. Spiegel.

Mr. Hart asked if a maintenance agreement could be implemented into the development conditions. Ms. Langdon explained that conditions of that nature were usually referred to DPWES; however, it was at the Boards' discretion whether or not to implement a maintenance agreement into the conditions.

Mr. Hart asked for more information regarding any problems with infiltration trenches. Bruce Douglas, Environmental Review Branch, DPZ, explained that the trenches could clog with fine particles of silt or organic matter and in some cases they would need to be removed for maintenance.

Mr. Hammack asked why an infiltration system was needed for the lot. Mr. Douglas explained that DPWES felt that the best way to deal with drainage was to minimize any water quality impact from the proposed construction. He said the trenches were the only practical way on site to capture and treat the storm water that would come from the roof and driveway of the house.

John Jacobs, 8703 Stockton Parkway, came forward to speak in opposition of the application. He requested that the Board deny the application. He suggested that there were several deficiencies and misrepresentations in the variance application.

Betsy Martin, 8707 Stockton Parkway, came forward to speak in opposition of the application. She stated that she opposed the application because of possible detrimental effects to the floodplain and the stream. She suggested that the berm was not a natural feature and questioned its dependability and function.

Paul Seagal, 8707 Stockton Parkway, came forward to speak in opposition of the application. He questioned several aspects of the application. He stated that he was concerned about the loss of open space in the area if the variance application was approved.

Annie McNeff, Chairman, Creek Committee, came forward to speak in support of the application. She stated that the applicant had put much planning and preparation into the proposal. She said that protection of the creek, wildlife, and the environment had been considered and incorporated into the project. She contended that the majority of the speakers in opposition had not reviewed the applicant's proposal.

Mr. Spiegel, in his rebuttal, explained that the proposed home would be limited to 3,000 square feet, which restricted maximum value of the lot. He submitted an aerial photograph of the property that illustrated the location of the proposed structure from the homes of several speakers in opposition. He suggested that remaining Outlots 2A, 11A, 12A, 13A, 14A and 15A in the area which were considered open space, were

deemed non-buildable lots; therefore, the variance would not set a precedence in the area. He informed the Board that the previous owners of the Menitee property were aware of the possibility of the lot being built. He reiterated that the majority of the speakers in opposition did not live in view of the proposed dwelling. He requested that the Board approve the variance request.

Chairman DiGiulian closed the public hearing.

Ms. Gibb stated that the application did not meet the required standards for the granting of a variance. She said that the applicant had not proven that impact on the floodplain could be prevented during construction, as the proposed home would be located .1 ft. from the floodplain. She explained that the Ordinance provision regarding the set back from a floodplain was in place for protection from this type of activity.

Mr. Hart stated that he would have been in favor a variance request to the 30-foot front set back as opposed to a variance to the floodplain buffer.

Mr. Pammel stated that there were many favorable distinctions between the D.R. Horton application and the case at hand.

Mr. Spiegel requested a waiver of the 12-month waiting period for re-filing an application.

Ms. Gibb moved to deny VC 2002-MV-017 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

H. JAY SPIEGEL, VC 2002-MV-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 0.1 ft. from a floodplain. Located at 8778 Thomas J. Stockton Pkwy. on approx. 21,696 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((1)) 10A pt. and 111-1 ((16)) A pt. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 7, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application did not meet the required standards for the granting of a variance.
3. It was not proven that impact on the floodplain could be prevented during construction, as the proposed home would be located .1 ft. from the floodplain.
4. The Ordinance provision regarding the set back from a floodplain is in place for protection from this type of activity.
5. The application did not meet Standards 5, 6A, and specifically Standard 8. There were similar lots in the neighborhood that were originally deemed not buildable but eventually were built on by being combined with other lots or with approval of a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;

- D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Kelley seconded the motion, which carried by a vote of 7-0. Mr. Kelley moved to waive the 12-month waiting period for re-filing an application. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 15, 2002.

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Page 411, May 7, 2002, (Tape 2), Scheduled case of:

9:30 A.M. ERNEST A. AND EILEEN M. DEMARCO, A 2002-PR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a portion of land abutting appellants' property was previously dedicated for public right-of-way and, therefore, is not subject to density credit. Located at 3428 Woodburn Rd. on approx. 41,857 sq. ft. of land zoned R-1. Providence District. Tax Map 59-1 ((1)) 17 and 59-1 ((8)) (B) A.

Margaret E. Stehman, Staff Coordinator, Zoning Administration Division, explained that there was a deferral request to grant staff additional time to meet with the appellant and to allow the appellant to have some additional meetings in an effort to resolve the appeal. She indicated that staff was in support of a 60-day deferral.

Lynne Strobel, representative for the appellants, explained that the appellant requested some additional time to hold meetings with the Providence District Supervisor and staff in an effort to resolve the appeal. She requested a 60-day deferral.

Mr. Ribble moved to defer A 2002-PR-2002 to July 23, 2002, at 9:30 a.m. 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 412, May 7, 2002, (Tape 2), Scheduled case of:

9:30 A.M. IL CIGNO RISTORANTE, A 2001-HM-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed on the property a tent which displays advertising signs, without Building Permit or Sign Permit approval and without obtaining Architectural Review Board approval of such permits, as required in the Historic Overlay District, all in violation of Zoning Ordinance provisions. Located at 1617 Washington Pl. on approx. 4,075 sq. ft. of land zoned PRC and HD. Hunter Mill District. Tax Map 17-2 ((31)) 1617 and B. (Admin moved from 10/23/01 and 1/8/02)

This case was administratively moved to July 23, 2002.

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Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. The session pertained to issues regarding Board of Supervisors vs. Board of Zoning Appeals and the Vanguard Decision.

Ms. Gibb seconded the motion, which carried by a vote of 7-0. The Board convened at 10:48 a.m. and reconvened at 11:50 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 7-0.

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Page 412, May 7, 2002, (Tape 2), After Agenda Items:

Approval of December 18, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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Page 412, May 7, 2002, (Tape 2), After Agenda Items:

Approval of Revised Plat  
James B. Veltri, VC 2002-PR-012

Mr. Pammel moved to approve the revised plat for VC 2002-PR-012. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 412, May 7, 2002, (Tape 2), After Agenda Items:

Approval of April 30, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 413, May 7, 2002, (Tape 2), After Agenda Items:

Intent to Defer  
Trustees of The Andrew Chapel United Methodist Church, SPA 83-D-045-2

Mr. Hart moved to approve the intent to defer for SPA 83-D-045-2. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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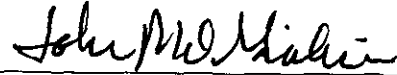
As there was no other business to come before the Board, the meeting was adjourned at 12:00 p.m.

Minutes by: Lori M. Mallam

Approved on: August 13, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 14, 2002. The following Board Members were present: John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; John Ribble; and Robert Kelley. Mr. Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no other Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 415, May 14, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBIN M. HOEHN, VC 2002-DR-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line such that side yards total 21.8 ft. Located at 7302 Idylwood Ct. on approx. 11,050 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 40-1 ((14)) 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. Robin Hoehn, 7302 Idylwood Court, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought a variance to permit construction of an addition that included the enclosure of an existing carport to be located 8.9 feet from the side lot line such that side yards totaled 21.8 feet. She said that the Zoning Ordinance required a minimum of 24 feet for total side yards for properties zoned R-2, Cluster, therefore, a variance of 2.2 feet was requested.

Andrew Hoehn presented the variance request as outlined in the statement of justification submitted with the application. He said they felt that the subject property was exceptionally narrow and that strict application of the Ordinance would produce undue hardship on them. He said that items stored in the open carport were subject to constant weather damage and theft. Mr. Hoehn stated that they believed that the hardship was not shared by many other home owners in their neighborhood as most other homes of the same model had enclosed garages. He said that the requested variance would not change the character of the neighborhood and the proposed addition would be in conformance with the other homes.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-DR-025 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBIN M. HOEHN, VC 2002-DR-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line such that side yards total 21.8 ft. Located at 7302 Idylwood Ct. on approx. 11,050 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 40-1 ((14)) 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 May 14, 2002; 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 neighborhood is one where this type of enclosure has been permitted.
4. The variance is minimal.
5. The variance will have no impact on the neighbors or surrounding neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition, shown on the plat prepared by George M. O'Quinn, dated January 17, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 22, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. NEIL J. & EMILY K. GOETZMAN, VC 2002-MV-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.1 ft. from side lot line. Located at 6102 Edgewood Terr. on approx. 8,100 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (3) 31.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said that the applicant sought a variance to permit construction of a deck to be located 5.1 feet from the southwest side lot line. She said that the Ordinance required a minimum side yard of 10 feet; therefore, a variance of 4.9 feet was requested.

Ms. Strobel presented the variance application request as outlined in the statement of justification submitted with the application. She stated that the house was part of an existing subdivision that was built in 1951. She said that the lot was exceptionally narrow, as was typical of many of the subdivisions in the Alexandria area. Ms. Strobel stated that the rear portion of the subject property sloped down severely and a retaining wall also crossed the back part of the property, approximately 25 feet from the back of the house. She said the balance of the lot was characterized by steep, heavily vegetated slopes. She said that the topography precluded the use of a large portion of their lot and the proposed deck would add a functional recreation area to the home.

Ms. Strobel stated that the house currently included an existing deck that was 5.1 feet from the property line. She said that the deck already existed when the applicants purchased the house, and the applicants had been unaware of the necessity of a variance for the deck until recently. She stated that the kitchen door on the side of the house opened directly onto the existing deck; therefore, that was the logical location for the proposed deck. She said there was no other door from the kitchen to the rear of the house, so it would cause an undue hardship to the applicants if the deck were not allowed. She stated that the encroachment of the new deck would not be any closer than that of the existing deck. Ms. Strobel stated that the deck would be compatible in size and character of the house and would enhance the appearance of the property in the neighborhood. She submitted to the Board, a signed letter of support from the two adjacent property owners. Ms. Strobel asked the Board to waive the eight day waiting period.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MV-027 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

NEIL J. & EMILY K. GOETZMAN, VC 2002-MV-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.1 ft. from side lot line. Located at 6102 Edgewood Terr. on approx. 8,100 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (3) 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 by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. Exceptional topographical conditions exist.

4. The lot is exceptionally narrow.
5. The property slopes down sharply in the back.
6. A retaining wall crosses the rear of the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the deck shown on the plat prepared by Alexandria Surveys International, LLC, dated December 31, 2001, as revised through February 19, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Kelley seconded the motion, which carried with a 6-0 vote. Mr. Pammel was absent from the meeting. //

Page 419, May 14, 2002, (Tape 1), Scheduled case of:

9:00 A.M. FALLS CHURCH CITY PUBLIC SCHOOLS, VC 2002-DR-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard and greater than 7.0 ft. in height in side yard. Located at 7124 Leesburg Pi. on approx. 39.28 ac. of land zoned C-8, R-1 and HC. Dranesville District. Tax Map 40-3 ((1)) 91, 93 and 94.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. MaryEllen Shaw, Superintendent of Falls Church City Public Schools, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to permit construction of a 120 feet high fence to be located in the front and side yards of the subject property. She said the Ordinance allowed a maximum fence height of 4 feet in the front yard and 7 feet in the side yard; therefore, variances of 116 feet and 113 feet was requested.

Ms. Shaw presented the variance application request as outlined in the statement of justification submitted with the application. She stated that she represented the students of George Mason Middle/High school. She said she was concerned for the safety of motorists in the vicinity, especially on Route 66, who could be endangered by a flying baseball from their athletic field. She said to provide that protection, it would be necessary to extend the pole and net structure that was initially installed on the field for that purpose. She said they currently were permitted to have a structure maximum of up to 60 feet, but now believed that they needed to extend the height to 120 feet. She said their situation was unique in that the athletic field was bordered by three adjacent roadways, one of which had cars traveling at high speeds.

Ms. Shaw stated that the Falls Church City School Board contracted for a study and master plan for the renovation of George Mason Middle/High School in 1994. She said that the renovation and expansion of the school building had reduced the space available for outdoor athletic facilities, which had also been in poor condition. She said that in 1998 the School Board contracted for the renovation and redesign of the playing fields to provide organized, safe and appropriate spaces for the school's athletic programs.

Ms. Shaw stated that during the construction of the fields, the athletic program had suffered a lot of disruption by having to schedule practices, games and matches away at other schools. She said that when the project was completed in the fall of 2000, everyone had been relieved to return to the home fields and excited about the improved facilities.

Ms. Shaw stated that the initial experiences with the baseball field were such that a significant number of balls had been hit over the first baseline fence and had landed on the nearby roadways, including Rt. 66. She said they had consulted their designers and engineers and contracted to add height to the fence and to place a canopy over the backstop. She said the work had been done over spring break, and games and practices resumed afterwards. She stated that this still had not provided enough added protection for motorist and had the athletic director cease using the fields for games. She said that had been a significant hardship on the students, as other schools in the district were quite far and required bus rides for the athletes that could be two hours each way. Ms. Shaw stated that 'away games' affected the success of the baseball players athletically with the loss of a home field advantage, but it also had a negative scholastic impact in requiring them to lose time to travel that could be used on study. Ms. Shaw stated that parents had voiced strong concerns that the students should not be burdened with worries about injuring motorists or pedestrians when they played on the baseball field. She said she felt that they also needed to model for the students a concern for public safety. She said she believed that the school's request would benefit the general public and neighbors as they traveled the roadways adjacent to the school fields.

Ms. Shaw introduced Tom Rust, of Patton, Harris and Rust, the firm that developed the design for the fields and for the proposed playing area. She said he would explain the logistics and answer any technical questions the Board might have.

Mr. Rust stated that the the Board had a package before them that entailed all the barriers, details, etc. He explained that the playing fields were at least 85 feet from the public roadways and felt that the design had met the criteria for the County.

Mr. Rust briefly talked about errant balls that had gone over the 60 foot barrier. He said that in their studies, 60 balls had gone over the barrier and 12 of them had ended up in the right-of-way, indicating a need for

additional protection for public safety. He said they had modeled the barrier design after a computer program called a "Baseball Home Run" simulator, which simulated the flight of a baseball, and the calculations had been enclosed with the BZA package.

Mr. Rust clarified the formula used and calculations of the program. He said that the program addressed the safety concerns and felt that the solution would solve a serious safety problem while allowing use of the baseball field and athletic facilities.

Chairman DiGiulian called for speakers in support of the application.

David Lasso (no given address), came forward to speak in support of the application. He stated that in talking with many parents who had children in the athletic programs, they noted that the school had expended an incredible amount of time, energy, and effort to protect the public.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-DR-033 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FALLS CHURCH CITY PUBLIC SCHOOLS, VC 2002-DR-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard and greater than 7.0 ft. in height in side yard. Located at 7124 Leesburg Pi. on approx. 39.28 ac. of land zoned C-8, R-1 and HC. Dranesville District. Tax Map 40-3 ((1)) 91, 93 and 94. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 14, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The applicant has done a thorough analysis for the fence.
4. The situation is extraordinary in regard to public safety and the proximity to the roadways.
5. The impact of the fence height to adjacent properties would be minimal with relation to the site configuration and the location of the fence.
6. The fence would protect motorists on I-66 and the Metro.
7. The site has been impacted by the widening of I-66.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately

adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 fence shown on the plat prepared by Patton, Harris, Rust & Associates, PC, dated February, 2002, as revised through February 27, 2002, 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. 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 22, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 421, May 14, 2002, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD AND EILEEN DIGIOVANNA, VC 2002-SP-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.3 ft. from rear lot line. Located at 8127 Haddington Ct. on approx. 13,463 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3 ((11)) 324.

Chairman DiGiulian stated that VC 2002-SP-024 had been administratively moved to June 4, 2002.

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Page 421, May 14, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES SOPER & KAREN QUINN, VC 02-M-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain and

construction of fence greater than 4.0 ft. in height in front yard. Located at 6611 Columbia Pi. on approx. 20,730 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((1)) 31. (admin moved from 3-19/02 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. Karen Quinn and Charles Soper, 6611 Columbia Pike, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant requested a variance to permit an existing concrete fence, greater than 4 feet in height in a portion of the front yard, and to permit the construction of a 6 foot high frame fence to be located on the northwestern portion of the front yard. He said the Zoning Ordinance permitted a maximum fence height of 4 feet in the front yard; therefore, variances of 2.6 feet for the existing concrete fence and 2.0 feet for the proposed fence were being requested.

Mr. Soper presented the variance application request as outlined in the statement of justification submitted with the application. He stated that their house was located about 40 feet from Columbia Pike and 50 yards from the intersection of Columbia Pike and Sleepy Hollow Road. He said that the traffic from the two roads produced a lot of noise, especially during rush hours, and he and his wife were trying to cut-down on some of the noise. He said they had replaced the windows in their house with noise reduction windows, added insulation to the walls and planted cedar trees along the road, but they could still hear the traffic.

Mr. Hammack asked Mr. Soper what the setback was for the concrete fence and Mr. Soper replied that it was approximately 40 feet back from Columbia Pike. He said when he originally erected the fence, he had not realized that a portion of the lot was considered to be the front yard, and he thought he was only utilizing the side and rear yards.

Mr. Hammack clarified that the concrete fence in the front of the yard was only about 12 feet long. Mr. Soper replied that was correct and the fence had been intended to be a sound barrier. He said the proposed frame fence would extend half-way across the front of his property along Columbia Pike because he and his wife had already put in a dirt berm to help relieve the sound in that area, which was ineffective.

Ms. Gibb clarified with Mr. Soper the exact place of each fence and the berm reflected in the photographs. She asked why the applicant wanted a fence rather than a berm. Mr. Soper replied that the berm did not seem to help with the noise problem.

Mr. Hammack stated that the plat showed the curb and gutter were 5 feet to 6 feet off the property line. He asked Mr. Soper to clarify exactly where the actual proposed fence would run. Mr. Soper replied that they had intended for the fence to run along the topography of the side yard and would be placed several feet back from the front property line. He stated that the fence could be pulled back 4 to 5 feet from the property line in the front yard if necessary.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 02-M-002. She stated that she would like the applicant to move the fence back 5 feet on the front of the property and that she would like to have a revised plat to indicate the change.

Mr. Kelley seconded the motion, which carried with a 6-0 vote. Mr. Pammel was absent from the meeting.

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9:00 A.M. CLAYTON R. GRAHAM, SP 2002-PR-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 19.1 ft. from rear lot line and accessory structure to remain 3.4 ft. from rear lot line and 3.5 ft. from side lot line. Located at 2832 Bolling Rd. on approx. 6,271 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((6)) 417.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Clayton R. Graham, 2832 Bolling Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant had requested a special permit for a reduction in minimum yard requirements based on error in building location to allow a laundry room addition to remain 19.1 feet from the rear lot line and an accessory structure to remain 3.5 feet from the side lot line and 3.4 feet from the rear lot line. He said the minimum rear yard requirement was 25 feet and the side yard requirement was 10 feet; therefore, a variance of 5.9 feet was requested for the laundry room and a variance for the accessory structure (shed) of 6.5 feet for the side yard and 9.1 feet for the rear yard had been requested.

Mr. Graham presented the special permit application request as outlined in the statement of justification submitted with the application. He stated that the laundry room addition had been constructed by previous owners in 1977 and that he had built the shed in the year 2000. He explained that he had received some information from the Homeowners Association and the error occurred because he had misinterpreted the information given to him.

Mr. Graham stated that his lot was rather small. He said due to the placement of the house on the lot and the angle of the rear lot line, the lot was very shallow in the rear. He stated that there was very little available space to allow the laundry room to exist without the variance. He said there was no other place on the lot for the shed in order to meet the setbacks and requirements. Mr. Graham requested a waiver of the 8-day waiting period.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 2002-PR-012 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

CLAYTON R. GRAHAM, SP 2002-PR-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 19.1 ft. from rear lot line and accessory structure to remain 3.4 ft. from rear lot line and 3.5 ft. from side lot line. Located at 2832 Bolling Rd. on approx. 6,271 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((6)) 417. 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 14, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a special permit.

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 limitations:

- 1. This variance is approved for the location of fences as shown on the plat prepared by George M. O'Quinn, dated October 24, 2001, as revised through January 4, 2002, as submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained and approval of final inspection shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Ribble seconded the motion, which carried with a 6-0 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 14, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 424, May 14, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE ANDREW CHAPEL UNITED METHODIST CHURCH, SPA 83-D-045-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-045 previously approved for a church with a child care center and nursery school to permit site modifications. Located at 1301 Trap Rd. on approx. 7.01 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 47. (In Association with SE 01-D-023 and 2232-D01-17). (Def. From 12/4/01 and 2/12/02) (Def. Req. from 4/2/02).



Page 425, May 14, 2002, (Tape 1), TRUSTEES OF THE ANDREW CHAPEL UNITED METHODIST CHURCH, SPA 83-D-045-2, continued from Page 424

Chairman DiGiulian stated that SPA 83-D-045-2 had been indefinitely deferred.

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Page 425, May 14, 2002, (Tape 1), Scheduled case of:

9:30 A.M. A.W. RUDZINSKI AND CHARLOTTE JONES, A 2002 -SU-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property was not legally subdivided and, therefore, no Building Permit can be issued for the erection of any building or structure on the lot, in accordance with Par. 1 of Sect. 18-603 of the Zoning Ordinance. Located at 15400 Lee Hwy. on approx. 2.22 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((3)) 1.

Chairman DiGiulian stated that appeal application A 2002-SU-003 had been administratively moved to June 25, 2002.

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Page 425 May 14, 2002, (Tape 1), Scheduled case of:

9:30 A.M. RADLEY AUTOMOBILES, INC., D/B/A RADLEY ACURA, A 2002-MA-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating the vehicle sale, rental and ancillary service establishment authorized under Special Exception SE 85-M-086 in violation of certain conditions set forth in the special exception approval. Located at 5823 Columbia Pi. on approx. 1.86 ac. of land zoned C-8. Mason District. Tax Map 61-2 ((1)) 105.

Chairman DiGiulian stated that appeal application A 2002-MA-005 had been administratively moved to July 16, 2002.

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Page 425, May 14, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Sang T. and Bong Y. Kim, SP 01-M-060

Mr. Hart moved to approve additional time of 90 days for SP 01-M-060 to July 22, 2002. Mr. Hammack seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

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Page 425, May 14, 2002, (Tape 1), After Agenda Item:

Request for Waiver of 12-Month Waiting Period  
Mr. & Mrs. Robert Rowe, VC 2002-HM-020

Mr. Hart recused himself from this case. Mr. Kelley and Mr. Ribble stated why they did not support the request. There was no motion, and the case was denied.

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Page 425, May 14, 2002, (Tape 1), After Agenda Item:

Approval of May 7, 2002 Resolutions

Mr. Hammack moved to approve the Resolutions of May 7, 2002. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

The Board recessed at 10:03 a.m. and reconvened at 10:16 a.m.

Mr. Hammack then moved that the members of the board of zoning appeals certify that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene executive session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Hart seconded the motion, which carried by a vote of 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 10:20 a.m.

Minutes by: Judith A. Gobbi

Approved on: February 25, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 21, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 427, May 21, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SOKRAT SAYDAHMAT, VC 2002-DR-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.6 ft. from side lot line. Located at 6509 Elnido Dr. on approx. 14,990 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((34)) 54.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sokrat Saydahmat, 6509 Elnido Drive, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 11.6 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 0.4 feet was requested.

Mr. Saydahmat presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose an existing screened porch. Mr. Saydahmat stated that there were similar enclosures in the neighborhood. He submitted photographs showing other enclosures.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-DR-023 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

SOKRAT SAYDAHMAT, VC 2002-DR-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.6 ft. from side lot line. Located at 6509 Elnido Dr. on approx. 14,990 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((34)) 54. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 21, 2002; 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 irregularly shaped and is narrow and widens out toward the rear.
4. The variance request is modest.
5. The request would be an enclosure of an existing structure.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an addition, shown on the plat prepared by Brian W. Smith, dated December 20, 2001, as revised through January 11, 2002, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 5-0-2. Mr. Hammack and Ms. Gibb abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 2002. This date shall be deemed to be the final approval date of this variance.

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Ordinance to permit modification to the limitations on the keeping of animals. Located at 4511 Tipton La. on approx. 13,349 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (C) 5.

Chairman DiGiulian noted that SP 2002-LE-013 had been administratively moved for notices to June 18, 2002.

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9:00 A.M. RONALD P. HARVEY AND VIRGINIA A. RIZZO, VC 2002-BR-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line. Located at 11156 Byrd Dr. on approx. 13,139 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 303.

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 Harvey and Virginia Rizzo, 11156 Byrd Drive, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to the dwelling, to be located 7.9 feet from the northwest side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4.1 feet was requested.

Ms. Rizzo presented the variance request as outlined in the statement of justification submitted with the application. She said the garage was necessary to provide shelter and a secure place for their cars. Ms. Rizzo stated that other neighbors had garages. She said the lot had an odd configuration and was exceptionally narrow. Ms. Rizzo stated that there was no other location for the garage.

Mr. Hart asked if the garage would be the same size as the existing carport. Ms. Rizzo stated that the garage would be a little larger but the roofline would remain the same.

There were no speakers, and Chairman DiGiulian closed the public hearing

Mr. Hart moved to approve VC 2002-BR-031 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

RONALD P. HARVEY AND VIRGINIA A. RIZZO, VC 2002-BR-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line. Located at 11156 Byrd Dr. on approx. 13,139 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 303. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 21, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is strangely shaped and the house is not centered on the lot.
4. Based on the photographs and the statement of justification, the property drops off on the other side

of the house, where it would be impractical to put a garage and functionally it would not work with the layout of the rooms in the house.

5. The proposed addition would be compatible with similar variances approved in the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Alexandria Surveys International, LLC, dated January 31, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Page 431, May 21, 2002, (Tape 1), RONALD P. HARVEY AND VIRGINIA A. RIZZO, VC 2002-BR-031, continued from Page 430

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 431, May 21, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SUN M. RO, SP 2002-BR-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 deck to remain 2.5 ft. from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with VC 2002-BR-030).

9:00 A.M. SUN M. RO, VC 2002-BR-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. from side lot line and eave 0.5 ft. from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with SP 2002-BR-014).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sun Ro, 8731 Shadow Lawn Court, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 2.5 feet from a side lot line. A minimum side yard of 6.25 feet is required; therefore, a modification of 3.75 feet for the deck was requested.

The applicant also requested a variance to construct a sunroom addition to be located 1.5 feet and an eave 0.5 feet from a side lot line. A minimum side yard of 8.0 feet is required; therefore, variances of 6.5 feet for the addition and 4.5 feet for the eave were requested. Staff noted that the addition did not conflict with the approved proffers or the final development plan.

Ms. Ro presented the requests as outlined in the statement of justification submitted with the application. She said the deck was built 10 years ago according to the Fairfax County Code. Ms. Ro said they were using part of the deck to make a sunroom. She said that her neighbors had a sunroom.

Mr. Hammack asked what was the purpose of Parcel A. Mr. Bernal stated that area was maintained by the school in order to provide a sidewalk and entrance.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant submitted photographs reflecting the distance of the deck from the property line.

Ms. Gibb asked if there was an Architectural Review Committee. Ms. Ro stated that the homeowners association approved the request.

Mr. Hart asked if the fence was on the property line. Ms. Langdon replied that the plat showed that the fence was on the other side of Parcel A.

Ms. Ro stated that when she moved to the property a wire fence was on the property line and that two other neighbors and herself built a new fence in the same location with the approval of the homeowners association.

Mr. Hart asked if the sunroom could be built on the other side of her property. Ms. Ro stated that there was a bay window on that side of property.

Mr. Hart asked if the sunroom could be moved to the left. Ms. Ro said she did not want to block the bay window and she also wanted to save the stairs.

Mr. Hart asked how tall was the sunroom. Ms. Langdon replied 17 feet.

Page 432 May 21, 2002, (Tape 1), SUN M. RO, SP 2002-BR-014 and SUN M. RO, VC 2002-BR-030, continued from Page 431

Mr. Hammack asked why the sunroom could not be built on the other side. Ms. Ro stated that there were French doors leading to the proposed area for the sunroom.

Mr. Hammack asked if there was a reason for a 12 x 16 foot sunroom. Ms. Ro replied that she could make it smaller.

Mr. Hammack asked if the person who built the deck was a licensed contractor. Ms. Ro replied no.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer decision of SP 2002-BR-014 and VC 2002-BR-030 to June 11, 2002, to allow the applicant time to review alternatives for a smaller sunroom. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

Mr. Pammel stated that staff needed to investigate whether there was a violaton of the PDH Ordinance where the applicant had fenced in common property for their own personal use.

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Page 432 May 21, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MEGAN & LAWRENCE MEGALE, SP 2002-SU-009 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of addition 13.0 ft. from side lot line. Located at 15097 Wetherburn Dr. on approx. 13,248 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 242. (Moved from 4/23 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. Megan Megale, 15097 Wetherburn Drive, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a Special Permit for modifications to the minimum yard requirements of the R-C district to permit the construction of a room and bathroom additions to be located 13.0 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 7.0 feet was requested for the room and bathroom additions.

Ms. Megale presented the request as outlined in the statement of justification submitted with the application. She stated that her daughter suffered from Multiple Sclerosis and they needed to install a handicapped bathroom and enlarge an existing bedroom. Ms. Megale said the additions had been approved by the Architectural Review Board. She said the neighbors were in support of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2002-SU-009 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MEGAN & LAWRENCE MEGALE, SP 2002-SU-009 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of addition 13.0 ft. from side lot line. Located at 15097 Wetherburn Dr. on approx. 13,248 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 242. (Moved from 4/23 for notices) Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all



applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 21, 2002; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The property was the subject of final plat approval prior to July 26, 1982.
- 3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
- 4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
- 5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following conditions.

- 1. This special permit is approved for the location of an addition shown on the plat by John E. Krobath, signed dated January 20, 1990, as revised by Megan Megale, dated February 13, 2002, 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 variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 2002.

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9:30 A.M. CAPITAL COMMERCIAL PROPERTIES, INC., A 2001-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing the storage of vans and pick-up trucks belonging to Cox Communication on property in the C-6 District and that such use is deemed to be a storage yard which is in violation of Par. 5 of Sec. 2-302 of the Zoning Ordinance. Located at 6459 Edsall Rd. on approx. 13.82 ac. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) 7D. (Admin moved from 1/29/02, 2/5/02, and 4/9/02)

Chairman DiGiulian noted that A 2001-MA-034 had been withdrawn.

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Page 434, May 21, 2002, (Tape 1), Scheduled case of:

9:30 A.M. CLYDE W. PROFFITT, A 2001-LE-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is maintaining two dwelling units on property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 3122 Clayborne Ave. on approx. 16,816 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (5) 27. (Admin moved from 8/14/01) (Def. from 9/18/01) (Admin moved from 12/11/01 and 2/26/02)

Dolores Kinney, Zoning Administration Division, stated that the appeal was of a determination that the appellant was maintaining two dwelling units on the subject property in violation of Sect. 2-501 of the Zoning Ordinance. As a result of a complaint filed by the Health Department, Zoning Enforcement Staff inspected the property and found a principal dwelling unit and a garage in which a portion had been converted into a dwelling unit. The dwelling unit contained a living room, 2 bedrooms, a bathroom, a laundry room, and a kitchen. Ms. Kinney said the rooms constituted the meaning of a dwelling unit. She said the appellant did not dispute that the second dwelling existed; however, the appellant indicated that the use was nonconforming and in order to meet the nonconforming provisions of the Zoning Ordinance, the two dwelling units would have to have been established prior to the 1941 Zoning Ordinance. Ms. Kinney said although the dwelling units had existed on the property for quite some time, there had been no zoning approval for a second dwelling unit. She said the appellant had not demonstrated that the second dwelling had been established prior to the 1941 Zoning Ordinance.

Mr. Hart asked if there was a definition of lot in the Zoning Ordinance. Ms. Kinney stated that lot is defined as the area described on the building permit or the zoning approval.

Mr. Hart asked where the structures were located on the lot. William Shoup, Deputy Zoning Administrator, presented aerial photographs to reflect the location of the structures on the lot. Mr. Shoup stated that the aerial photographs reflected that the two structures on Lot 27 were close to the property line.

Mr. Hart asked if there were 6 lots referenced on the building permits. Ms. Kinney replied initially there were 6 lots. She said in 1993, three of the properties, Lots 24-26, were conveyed to the neighbors, which left the appellant with Lots 27-29. Ms. Kinney said only Lots 27-29 were at issue.

Ms. Kinney stated that in 1950 when the lot was considered 24-29, there was only the current house and the garage. She said in 1997, subsequent to the conveyance of the first 3 properties, the second house on Lot 24 was constructed. Ms. Kinney said initially when there were 6 lots, there were only the principal dwelling and the garage.

Mr. Proffitt stated that he moved to the area 50 years ago behind the Lots at 3105 Groveton Street. He said eventually his father purchased 3109 and he bought a vacant lot and built a house on it. Mr. Proffitt stated that later he purchased 3121 Groveton Street. He said all the records show that the property was zoned for 2 houses. Mr. Proffitt presented documents that reflected the wording of two dwellings or garage apartments.

Mr. Hart asked what the documents were that Mr. Proffitt was presenting to the Board. Mr. Proffitt replied that every document he was able to obtain showed that there were two dwellings on the property.

Mr. Shoup said the documents Mr. Proffitt submitted were notation cards from the Department of Tax Administration Archives that were used when assessors assessed the property.

Ms. Kinney stated that staff had a copy of that information. She said what it reflected was that in 1973 the property was assessed as having a principal dwelling and a carport garage which connected the garage to the principal dwelling and the garage at that time was an apartment. Ms. Kinney said the staff report indicated that assessments may have assessed the property for two dwellings but there was no zoning approval.

Mr. Hart asked when someone started living in the garage. Mr. Proffitt said in the 1930s. Mr. Hart asked when was the house built. Mr. Proffitt replied that there was no building permit and no one knew when the house was built.

Mr. Hart asked if staff had the chronology of what was built and when. Ms. Kinney said according to the assessment records, the house was constructed in 1945, even though a building permit or zoning records could not be found for the house. She said staff based the construction of the house on assessment

Page 435, May 21, 2002, (Tape 1), CLYDE W. PROFFITT, A 2001-LE-014, continued from Page 434

records. Ms. Kinney said in 1950, a plat for the cabin came in as an addition, but was not approved. There were no building permits or initial approval for the cabin. She said in 1957 there was an addition to the detached garage, but there was no building permit for the garage.

Chairman DiGiulian called for speakers.

Ellen Cooke, no address given, came forward to speak. She stated that she moved to the area in 1946. Ms. Cooke gave testimony that there were two buildings on the subject property at that time and that there were people constantly living there.

Mr. Proffitt submitted a letter from Harriett Mays who was unable to attend the public hearing.

Michelle Gethsmer, Clayborne Avenue, came forward stating that she was a new resident to the neighborhood. She presented a letter from a neighbor.

Joyce Pollard, owner of adjoining property and sister to the appellant, came forward to speak. She said she had lived in the area since 1953. Ms. Pollard said there were a lot of inconsistencies with information submitted.

Ms. Kinney stated that there was no proof of zoning approval for 2 dwellings. She said the appellant needed to show nonconformity to reflect that there was consistent and continuous use of 2 dwellings since 1941. Ms. Kinney stated that based on the testimony there had been some gaps in between that time and that the garage had not been consistently and continuously used as a second dwelling prior to 1941 until now.

Ms. Gibb stated that the use did not have to be continuous, that there could be up to a two-year gap. Ms. Kinney replied that was correct. Ms. Gibb said she was concerned that as time went by, it was becoming hard to find people old enough for testimony and records were old. She said the issue became a great burden on the citizen to establish their rights.

Mr. Hammack asked about the sewer and water connection. Ms. Kinney said staff could research that.

Mr. Hart stated that it would be helpful to have before and after aerial photographs and sewer connection records.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer A 2001-LE-014 for decision only to July 30, 2002. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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Page 435, May 21, 2002, (Tape 1), Scheduled case of:

9:30 A.M. TYSON'S FORD, INC., A 2002-PR-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's storage of new vehicles is a storage yard which is not permitted and is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 1410 and 1430 Spring Hill Rd. on approx. 10.63 ac. of land zoned C-4. Providence District. Tax Map 29-1 ((1)) 67A and 69.

Chairman DiGiulian indicated that A 2002-PR-006 had been administratively moved to March 2003.

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Page 435 May 21, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Yang S. and Sun C. Kim, SP 97-L-031

Mr. Pammel moved to approve the request for Additional Time. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The Board approved an additional 24 months to

Page 436 May 21, 2002, (Tape 1), After Agenda Items, continued from Page 435

an expiration date of May 19, 2004. The Board moved that there would be no further additional time requests approved.

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Page 436 May 21, 2002, (Tape 1), After Agenda Item:

Approval of Revised Plat  
David L. and Sandra J. Giddens, VC 01-P-129

Mr. Hammack moved to approve the revised plat. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 436 May 21, 2002, (Tape 1), After Agenda Item:

Approval of May 14, 2002 Resolutions

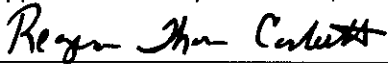
Mr. Hammack moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Regina Thorn Corbett

Approved on: September 10, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 28, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; James Pammel and John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 437, May 28, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      NAWAL HAMAD, VC 2002-MA-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence 12.0 ft. in height in rear yard and to permit a fence 8.0 ft. in height to remain in side yard. Located at 3330 Pensa Dr. on approx. 1.2 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((26)) (5) 4, 5 and 61-2 ((26)) (6) A. (Admin. moved from 6/4/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nawal Hamad, 3330 Pensa Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a fence 12-feet in height in the rear yard and approval to permit an existing fence 8.0 feet in height to remain in the side yard. The Zoning Ordinance permits fences 7.0 feet in height in the rear and side yards; therefore, variances of 5.0 feet for the 12-foot fence and 1.0 foot for the 8.0 foot fence were requested.

Ms. Hamad presented the variance request as outlined in the statement of justification submitted with the application. She explained that vagrants had been trespassing on her property to sleep in her shed, swim in her pool and eavesdrop on her children while they were in the yard and swimming pool. She informed the Board that she was constantly calling the police for trespassing on her property. She stated that the vagrants were entering the rear of her property from open space that was owned by an adjacent shopping center. She said that the fence-needed to be 12-feet in height in the rear yard to prevent people from accessing her property by standing on parked cars and dumpsters located in the shopping center parking lot. She explained that she was in fear of her family's safety and requested that the Board approve her application.

Mr. Hart noted that the proposed fence would be located across a sanitary easement and asked if there would be any repercussions. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the Department of Public Works and Environmental Services allowed fences to be constructed across sanitary easements in a perpendicular fashion with the understanding that the fence would be removed if any work needed to be done in that area.

Chairman DiGiulian called for speakers.

Jerri Wayne, Glen Forest Neighborhood Watch Coordinator, came forward to speak in support of the application. She explained that there had been numerous calls to the police for vagrant activity and noise from the shopping center and the restaurant area behind the residences. She informed the Board that there were sanitary issues because the vagrants also used the open space as a bathroom area. She said the community was in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the 12-foot fence would not stop the vagrancy problem and that the shopping center should absorb some of the burden that was being placed on the adjacent homeowners.

Mr. Hammack moved to approve VC 2002-MA-044 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

NAWAL HAMAD, VC 2002-MA-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence 12.0 ft. in height in rear yard and to permit a fence 8.0 ft. in height to remain in side yard. Located at 3330 Pensa Dr. on approx. 1.2 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((26)) (6) A (Admin. moved from 6/4/02) 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 28, 2002; 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 the granting of a variance.
3. The circumstances of the property that necessitate the variance request are very unusual and the property suffers from unusual circumstances.
4. The testimony and letters from the Glen Forest Citizens Association illustrate that the 12-foot fence would not change the nature and character of the Zoning District.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of two fences, shown on the plat prepared by George M. O'Quinn, dated February 19, 2002, as revised through April 3, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CYNTHIANNE C. RHODE, VC 2002-MV-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 8.2 ft. and addition 10.6 ft. from rear lot line. Located at 7561 Cloud Ct. on approx. 12,243 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((16)) 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. Cynthiaanne Rhode, 7561 Cloud Court, Springfield, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a deck and a sunroom addition to be located 8.2 feet and 10.6 feet respectively from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 13 feet for the deck and 25 feet for the sunroom addition; therefore, variances of 4.8 feet and 14.4 feet were requested respectively.

Mr. Hart noted that the Fairfax County Park Authority had submitted a memorandum requesting the applicants to remove several items that were encroaching in parkland and to construct a fence between their property and the park to ensure that there would be no more future encroachments. He asked why the removal of the encroaching items was addressed in the development conditions but the issue of the fence was not included. Ms. Josiah explained that staff felt that the issue of the fence was a decision to be made at the Board level.

Ms. Rhode presented the variance request as outlined in the statement of justification submitted with the application. She stated that she and her husband planned to retire in the home. She explained that their allergies prevented them from utilizing the existing deck and the sunroom would allow them the ability to enjoy their yard. She stated that the lot precluded construction of the deck in any other location on the property. She said that the sunroom would have no negative impacts on any adjacent neighbors. She provided photographs illustrating that all of the items that were inadvertently placed on parkland had been moved back. Ms. Rhode stated that she did not want to install a fence between her lot and the parkland and ensured the Board that there would be no further encroachments.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-MV-034 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CYNTHIANNE C. RHODE, VC 2002-MV-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 8.2 ft. and addition 10.6 ft. from rear lot line. Located at 7561 Cloud Ct. on approx. 12,243 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((16)) 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 May 28, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property is located on a triple pipe-stem.
3. The property is irregularly shaped.
4. The house is situated askew on the property and is not parallel to the rear or side property lines.
5. The Board indicated that the applicant is not required to install a fence along the rear property line, as recommended by the Fairfax County Park Authority.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.



NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the deck and sunroom addition shown on the plat prepared by Alexandria Surveys International, LLC, dated February 25, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. The fence and trellis that are located on land owned by the Fairfax County Park Authority shall be removed within 30 days of this approval.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 441, May 28, 2002, (Tape 1), Scheduled case of:

- 9:00 A.M.      HAOYING CHEN & XUDONG JIANG, SP 2002-DR-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 dwelling to remain 14.6 ft. from side lot line and fence 6.0 ft. in height to remain in front yard. Located at 950 Seneca Rd. on approx. 1.17 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((3)) 12.
- 9:00 A.M.      HAOYING CHEN & XUDONG JIANG, VC 2002-DR-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 951 Preserve Ct. on approx. 1.17 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((3)) 12. (Concurrent with SP 2002-DR-015).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the requests as contained in the staff report. The applicants requested approval of a special permit for reduction in minimum yard requirements based on an error in building location to permit the dwelling to remain 14.6 feet from the side lot line. The Zoning Ordinance requires a minimum 20-foot side yard; therefore, a modification of 5.4 feet was requested. The applicant also sought approval of a variance to permit an existing 6.0 foot high fence to remain in the front yard. She explained that the applicants requested that the fence be moved approximately 5.0 feet to run parallel to the property line. The Zoning Ordinance allows a maximum fence height of 4.0 feet in the front yard; therefore, a variance of 2.0 feet was requested.

Mr. Hart suggested that staff contact Zoning Enforcement regarding several allegations from neighbors that Lot 13 was being used as a junkyard.

Lynne Strobel, agent for the applicants, presented the requests as outlined in the statement of justification submitted with the application. She explained that the error was a result of a misonumentation in the original survey of the lot by Eastern States Engineering. She stated that the location of the home at the current location was not a detriment to any adjacent properties. Ms. Strobel explained that the applicant discovered the problem with the fence height upon filing out the special permit application. She stated that the fence did not present any sight distance problems. She informed the Board that the front yard of the applicants' property was directly adjacent to the rear yard of Lot 13. She stated that Lot 13 could construct the same fence by-right.

Chairman DiGiulian called for speakers.

Dinesh Mehta, 1004 Preserve Court, came forward to speak in support of the application. He stated that he felt strongly that the Board should approve the applications based on the fact that the applicants' property faced Lot 13, which was an eyesore.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-DR-015 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAOYING CHEN & XUDONG JIANG, SP 2002-DR-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 dwelling to remain 14.6 ft. from side lot line and fence 6.0 ft. in height to remain in front yard. Located at 951 Preserve Court on approx. 1.17 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((3)) 12. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 28, 2002; 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 Eastern States Engineering, dated January 11, 2002, as revised through May 20, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb and Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart approved VC 2002-DR-068 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

HAoyING CHEN & XUDONG JIANG, VC 2002-DR-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 951 Preserve Ct. on approx. 1.17 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((3)) 12. (Concurrent with SP 2002-DR-015). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 28, 2002; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
- 3. The neighborhood supports the request.
- 4. The front yard of the applicants' property is directly adjacent to the rear yard of Lot 13.
- 5. The fence could be installed by-right on the adjacent lot.

6. The fence will have no negative impact on the adjacent properties.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the fence shown on the plat prepared by Eastern States Engineering, dated January 11, 2002, as revised through May 20, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 444, May 28, 2002, (Tape 1 and 2), Scheduled case of:

9:00 A.M. KURT D. JACOBS, VC 2002-HM-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.4 ft. from rear lot line. Located at 1533 Coat Ridge Rd.

on approx. 8,470 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 11-3 ((3)) 102.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kurt Jacobs, 1533 Coat Ridge Road, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition to be located 13.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 11.6 feet was requested.

Mr. Jacobs presented the variance request as outlined in the statement of justification submitted with the application. He stated that he needed the garage to provide shelter for a trailer and two other vehicles. He said because his property was on a pipe-stem there were more stringent restrictions to his side and rear yard lot lines that necessitated the variance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-HM-032 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

KURT D. JACOBS, VC 2002-HM-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.4 ft. from rear lot line. Located at 1533 Coat Ridge Rd. on approx. 8,470 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 11-3 ((3)) 102. 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 28, 2002; 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 the granting of a variance.
3. The property has an extraordinary situation with regard to the pipe-stem.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by George M. O'Quinn, dated December 21, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 446, May 28, 2002, (Tape 2), Scheduled case of:

9:00 A.M.           STEPHEN J. RODGERS, VC 2002-MA-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from side lot line. Located at 6302 Yosemite Dr. on approx. 10,772 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (K) 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. Stephen Rodgers, 6302 Yosemite Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the enclosure of an existing carport to allow a garage addition to be located 9.3 feet from a side lot line. The Zoning Ordinance permits a minimum side yard of 12 feet; therefore, a variance of 2.7 feet was requested.

Mr. Rodgers presented the variance request as outlined in the statement of justification submitted with the application. He stated that the existing boundaries of the carport would not be extended and the proposed structure would consist of a dining room and a single car garage. He explained that it was not practical to enclose the existing structure that was built in the 1960's, and maintain the 12- foot setback due to the extent of the roof system which was integral to the existing house. He stated that the addition would be in character with the neighborhood and that there was neighborhood support.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002-MA-029 for the reasons stated in the Resolution.

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### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN J. RODGERS, VC 2002-MA-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from side lot line. Located at 6302 Yosemite Dr. on approx. 10,772 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (K) 19. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 28, 2002; 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 the granting of a variance.
3. Any impact on the adjoining lots will be minimal.
4. The variance request is modest.
5. The applicant is enclosing an existing carport so the roofline will not be extended or raised.
6. The lot is unusual in shape.
7. The applicant is making the best use of the size and shape of the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition (Garage) as shown on the plat prepared by Jeffrey H. Wolford, Sr. dated May 14, 1979, as revised by Stephen J. Rodgers through March 5, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 5, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 448, May 28, 2002, (Tape 2), Scheduled case of:

9:00 A.M. TRUSTEES OF CAPITAL WORSHIP CENTER, SP 02-Y-001 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and a child care center. Located at 7000 Ordway Rd. on approx. 11.72 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 71B, 72, 73, 76B and 76C. (Administratively moved from 4/9/02 and 4/23/02 per appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen K. Fox, 10511 Judicial Drive, Fairfax, Virginia, replied that it was.



Mr. Fox requested a continuance to allow the applicants time to resolve several technical issues that related to storm water management and undisturbed open space.

Chairman DiGiulian called for speakers to the question of a continuance.

Lawrence Ellis, 7108 Ordway Road, Member, Mount Olive Baptist Church Trustees, came forward to speak in support of the application. He stated that his congregation was in support of the application and of the request for a continuance.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to continue SP 02-Y-001 to July 2, 2002, 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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9:30 A.M. LEISURE FITNESS, INC., A 2001-PR-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination to deny Sign Permit Application 0110-7781-5015 because the proposed sign extends above the perimeter of the roof in violation of Par. 1 of Sect. 12-203 of the Zoning Ordinance. Located at 8133 Watson St. on approx. 28,423 sq. ft. of land zoned C-7. Providence District. Tax Map 29-4 ((2)) B2. (admin moved from 3/26/02)

Chairman DiGiulian noted that this appeal had been administratively moved several times. He asked what the status of the appeal was. Jayne Reale, Zoning Administration Division, explained that the appellants were attempting to resolve the violation and that staff expected to withdraw the appeal on July 9, 2002.

This appeal was administratively moved to July 9, 2002, at 9:30 a.m.

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9:30 A.M. HAI T. NGO/TEO CHEW ASSOCIATION, A 2002-MA-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has established a public benefit association on property located in the R-4 District without Special Exception approval, in violation of Zoning Ordinance provisions. Located at 3236 Annandale Rd. on approx. 14,434 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((8)) 17.

Chairman DiGiulian noted that the notices were not in order.

Jayne Reale, Zoning Administration Division, explained that Herman Sawyer contacted her and stated that he wanted to withdraw the appeal. She stated that she had received a letter via fax early on May 28, 2002, which indicated that Mr. Sawyer wanted a one week deferral to allow time for the Special Exception application to be accepted. He indicated that if the Board did not accept the deferral he would withdraw the appeal application. She submitted that letter to the Board. Ms. Reale stated that staff would not support a deferral. She said that the complaint was received in July of 2000, and Zoning Enforcement had worked with the appellants for approximately a year and a half to submit a Special Exception application and the application was still not complete. She explained that since the appeal had been filed, the appellant had made very little progress in completing the Special Exception application. She informed the Board that the notices for the appeal had not been completed. She said that there had been several complaints from the neighbors regarding certain activities that were going on in the home.

Chairman DiGiulian questioned if a deferral of one week would be enough time for the appellant to submit an accurate Special Exception application. Ms. Reale replied that it was not enough time due to the number of deficiencies on the plat.

Page 450, May 28, 2002, (Tape 2), HAI T. NGO/TEO CHEW ASSOCIATION, A 2002-MA-007, continued from Page 449

Mr. Hart asked for clarification regarding the issue of whether or not the appeal was timely filed and he asked for more information regarding why the notices were not completed. Ms. Reale explained that the appeal was received on the 31<sup>st</sup> day and the Board had accepted the appeal. She explained that Mr. Sawyer had given no reason as to why the notices were not completed but he had visited the office on the 15-day deadline for the notices to be completed and submitted an affidavit for the Special Exception application. She said that at that time she informed Mr. Sawyer that the notices needed to be completed by the close of business on that day or the hearing would not go forward and he would have attend the hearing to explain to the Board why they were not completed. She noted that Mr. Sawyer was not present at the hearing. Mr. Hart asked when the deferral letter had been faxed to the office. Ms. Reale replied that it was received via fax at 6:45 a.m. on May 28, 2002.

Mr. Pammel moved to dismiss A 2002-MA-007. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 450 May 28, 2002, (Tape 2), After Agenda Items:

Approval of May 21, 2002 Resolutions

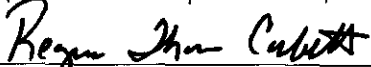
Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

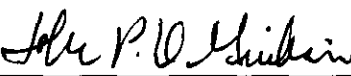
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As there was no other business to come before the Board, the meeting was adjourned at 10:08 a.m.

Minutes by: Lori M. Mallam

Approved on: September 17, 2002

  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

The meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 4, 2002. The following Board Members were present: John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; John Ribble; James Pammel; and Robert Kelley.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 451, June 4, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MARK LURIA, VC 2002-MV-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7801 Blue Jasmine Ct. on approx. 6,986 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-1 ((15)) 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. Mark Luria, 7801 Blue Jasmine Court, Springfield, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought permission for a variance to allow a 6.6 feet high fence to remain in the front yard of a corner lot. She said the Ordinance permitted a maximum fence height of 4 feet for the front yard; therefore, a variance of 2.6 feet was requested.

Mr. Luria presented the variance request as outlined in the statement of justification submitted with the application. He said the Board of Directors of the Afton Glen Homeowners Association (HOA) supported his application along with other neighbors whose letters he had submitted to the Board. He read into the record a short portion of a letter submitted by Tom and Hillary Shubert who also live on Blue Jasmine Court: "As a property owner and resident of Blue Jasmine Court, I can attest that the fence does not obstruct the view of traffic or present any other safety hazards. The fence is architecturally pleasing and does not in any way detract from the appearance of the neighborhood or reduce property values."

Mr. Luria stated that he had two compelling arguments for his fence. He said the first reason was that the rear yard was exceptionally shallow and the most useful portion of the property for recreation was the portion of the yard adjacent to Groveland Drive. He said the area could be made safe only by the installation of an effective barrier.

Mr. Luria stated that the second reason was the impending construction of the Catholic church across the street from his house. He said it would have a large impact on the neighborhood and especially to his house, which was directly across the street from the proposed main entrance of the church. He said the church related vehicular and pedestrian traffic would greatly impact their daily lives and the lives of their children and their right to quiet enjoyment. He said that was an undue hardship not shared by other property owners.

Mr. Luria stated that his concerns included specifically the noise of construction, construction traffic, construction dust and debris, the large number of construction workers entering the neighborhood, and eventually, a tremendous increase in car trips to about 1,300 per day. He said he was also concerned with overflow church parking along Groveland Drive in front of their house where the fence had been placed.

Mr. Luria stated that the violation notice given to them on February 6, 2002, had made no mention of a sight distance issue, the staff report dated May 28, 2002, did not mention a sight distance issue and he felt they met all the requirements of Section 2-505 of the Zoning Ordinance for sight distance restrictions.

Mr. Hart stated that Mr. Luria had asked for 6.6 feet in height for the fence and there was a discrepancy between that and what the HOA had approved. He stated that the January 28th letter from the HOA Board stated that they had approved up to 6 feet, contingent on BZA approval. Mr. Hart asked for a clarification of the fence height.

Mr. Luria replied that the fence itself was 6 feet in height; however, the bottom posts extended 4-6 inches above the side line of the fence. He said that the fence under the deck was actually 4 feet and as the fence progressed down the slope, the top of the last post was actually 6.6 feet high. This was shown by the

surveyor on the variance plat after the HOA Board had approved the 6 foot height. He said he felt confident that he would not have any problems with the HOA Board.

Chairman DiGiulian called for speakers.

Thomas A. Dietz, 8610 Groveland Drive and MaryAnn Gloria, 7809 Cherry Orchard Court, Springfield, came forward to speak in opposition to the application. The nature of the objections were based on traffic safety in the neighborhood. They felt the fence presented a safety hazard in obstructing the view of approaching traffic on Blue Jasmine Court.

Mr. Luria stated, in his rebuttal, that the fence had been taken back 3 feet from the sidewalk to ensure sight distance and he believed that the sight distance was well within the County requirements.

Chairman DiGiulian presented to the Board one other letter from Marleen A. Brake in opposition to the application. He then closed the public hearing.

Mr. Hammack moved to approve VC 2002-MV-036. The motion failed for the lack of a second vote.

Mr. Pammel moved to deny VC 2002-MV-036 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK LURIA, VC 2002-MV-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 7801 Blue Jasmine Ct. on approx. 6,986 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-1 ((15)) 14. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The existing fence presents a safety problem due to lack of visibility for traffic.
3. The occupants of Lot 15 have their visibility totally obstructed when backing out of their driveway.

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. Hart seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 2002.

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Page 453, June 4, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LUU T. NGUYEN, SP 2002-BR-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.7 ft. from side lot line. Located at 5503-Gardner Pl. on approx. 19,926 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (17) 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. Luu Nguyen, 5715 Nordeen Oak Court, Burke, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a special permit to allow reduction in minimum yard requirements based on an error in building location to permit an addition to remain 5.7 feet from the side lot line. She said the Ordinance required a minimum of 12 feet for the side yard; therefore, a modification of 6.3 feet was requested.

Mr. Nguyen presented the variance request as outlined in the statement of justification submitted with the application. He stated that he inherited the problem when he moved into the dwelling 20 years ago. He stated that the carport had been enclosed on one side by the previous owner, but that it had not been detrimental to the use or enjoyment of other property owners in the immediate vicinity. He said that to comply with the minimum yard requirement would cause an unreasonable hardship.

Mr. Pammel asked who had erected the carport and Mr. Nguyen replied that the previous owners had built it. Ms. Josiah stated that there had been a building permit issued for the construction of the carport itself, but there had not been a building permit issued for the enclosure.

Mr. Hammack asked Mr. Nguyen how long he had owned the property and Mr. Nguyen replied that he had been living there for the past 20 years. He said he moved out of the house last year but that his mother and sister still lived there.

Mr. Hammack asked when Mr. Nguyen inherited the property and who the previous property owners had been. Mr. Nguyen replied that he had inherited the house around 1980, and his family had rented the house from his uncle who was the previous owner. Mr. Nguyen stated that the carport had been enclosed ever since they had moved into the house.

There were no speakers, and Chariman DiGiulian closed the public hearing.

Ms. Gibb asked staff if the request for a special permit was the result of a complaint. Ms. Josiah replied that it was. She said someone had complained about miscellaneous items on the lot, and the need for a special permit was discovered upon inspection.

Mr. Pammel stated that the building permit called for a setback of 8 feet and obviously whatever had been done was without awareness of the restrictions of the building permit.

Mr. Pammel moved that SP 2002-BR-016 be denied. He stated that he did not believe that the non-compliance was done in good faith because they had not complied with the restrictions set forth in the building permit.

Mr. Kelley seconded the motion.

Mr. Hart asked staff that if the Board denied the special permit, would the applicant have to tear down the side or move it back to where the building permit allowed. Ms. Josiah replied that the applicant would have to take the siding off and comply with the original building permit. She said it showed a distance of 8 feet from the side lot line and the applicant would also have to remove the enclosure.

Ms. Gibb asked staff what was the date of the building permit application and Ms. Josiah replied that it was October 8, 1976.

Mr. Hammack stated that he would like to have more information on when the title of the property transferred. He said he was unclear as to whether Mr. Nguyen or his mother had actually inherited the property.

Mr. Hammack made a substitute motion to defer decision for two weeks and ask Mr. Nguyen to bring back additional information.

Mr. Kelley seconded the motion.

Mr. Hammack stated that he would like to see documentation of the date that the property was inherited, whether there were any electrical connections or plumbing installed in the garage, the name of the contractor if there was one, the date that Mr. Nguyen's uncle died, a copy of the deed, whether the property was conveyed by will, and who were the actual current owners.

Ms. Josiah stated that she had a copy of the land deed which she gave to the Board for review.

Mr. Nguyen stated that he was the owner of the subject property, but the deed to the property was under his name and his siblings. He said that his uncle had not passed away, but what he meant by inheritance was that they had bought the property from his uncle. He stated that his family had rented the property from 1980 to 1991, and then they purchased it in 1991.

Mr. Hammack asked staff who had applied for the building permit and Ms. Josiah replied that the building permit that was applied for in 1976 was applied for by Edward and Leslie Martin. She said another building permit had been applied for by Lee Nguyen in 1979 for the addition of a family room.

Mr. Hart stated that he would like to see copies of the building permit paperwork.

Mr. Pammel stated that there was some confusion in Mr. Nguyen's presentation. He stated he wanted clarification of when the construction took place. Mr. Nguyen replied that when he moved into the house in 1980, the carport was already enclosed.

Page 455 June 4, 2002, (Tape 1), LUU T. NGUYEN, SP 2002-BR-016, continued from Page 454

Mr. Hammack stated that the deed that was given to him by staff showed that the owners of the property were Doan and Vivian Nguyen and that Mr. Nguyen was not an owner. Mr. Nguyen replied that Doan was his mother and Vivian was his sister. Mr. Hammack stated that the deed showed that the Grantors were Vivian, Luu, Colette, and Lance Nguyen and the Grantees were Doan and Vivian Nguyen.

There was a discussion of exactly who the valid owners of the property were and when the property conveyed.

The motion to defer until June 25, 2002, at 9:00 a.m., carried by a vote of 7-0.

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Page 455, June 4, 2002, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD AND EILEEN DIGIOVANNA, VC 2002-SP-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.3 ft. from rear lot line. Located at 8127 Haddington Ct. on approx. 13,463 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3 ((11)) 324. (Admin moved from 5/14/02 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. Richard DiGiovanna, 8127 Haddington Court, Fairfax Station, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval to permit construction of an addition to the dwelling to be located 11.3 feet from the rear lot line. She said the Ordinance required a minimum rear yard of 25 feet; therefore, a variance of 13.7 feet was requested.

Mr. DiGiovanna presented the variance request as outlined in the statement of justification submitted with the application. He stated that his house was the last home to be built in 1990 on a cul-de-sac with a large turning circle. He said his home was centrally located on the lot at that time and was set back approximately 30 feet from the curb in the front and 27 feet in the back. He said they enjoyed a lot of privacy from the trees toward the side and back of the home, but had proportionally less back yard than any one else. He said that approximately 3 years ago, the adjacent land was developed with 9 new homes and the cul-de-sac was changed to a through street which placed his home 50 feet back from the street.

Mr. DiGiovanna stated that he would like to build an enclosed addition similar to many of the neighbors on the street and designed by a professional architect. He said he felt that the new addition would add value to his home and compliment the neighborhood. He said the addition would not hinder or alter the view of the neighbors and he would keep the same open space in the back yard. He stated that he presently backed to the woods and had a deck that extended out approximately the same distance as the proposed addition.

Mr. Hart asked if the large tree depicted on the plat would have to be removed and Mr. DiGiovanna replied that it would. They had a brief discussion to clarify the dimensions on the plat.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-SP-024 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD AND EILEEN DIGIOVANNA, VC 2002-SP-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.3 ft. from rear lot line. Located at 8127 Haddington Ct. on approx. 13,463 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3 ((11)) 324. (Admin moved from 5/14/02 for notices). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot is relatively wide and shallow.
4. The house is positioned at a slight angle toward the rear of the lot, reducing the usable backyard.
5. There would not be a significant negative impact on anyone in the direction of the variance due to the absence of structures in the 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by SDE, Inc., dated February 6, 2002, as revised and signed through April 19, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall



be obtained.

- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN S. & JULIE P. PARKER, VC 2002-LE-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.1 ft. from front lot line. Located at 4363 Penwood Dr. on approx. 10,755 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((39)) 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. Julia P. Parker, 4363 Penwood Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought a variance to construct a sunroom and expand the kitchen to be located 26.1 feet from the front lot line of a through lot. He said the minimum front yard requirement was 30 feet; therefore, a variance of 3.9 feet was requested.

Ms. Parker presented the variance request as outlined in the statement of justification submitted with the application. She said they requested the variance to accommodate the construction of a sunroom/garden room to be located in the backyard in place of the existing deck. She said her property was on a pipestem lot, and had no frontage on Penwood Drive. She said that the County considered her back yard as her front yard. She stated that the family did not use the deck due to the humidity and wanted to increase their living space with the addition. She said she had letters of support to submit from her neighbors.

Mr. Hart had a brief discussion with Ms. Parker to clarify the dimensions on the plat.

Mr. Ribble moved to approve VC 2002-LE-040 as noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOHN S. & JULIE P. PARKER, VC 2002-LE-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.1 ft. from front lot line. Located at 4363 Penwood Dr. on approx. 10,755 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((39)) 4. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The property has an extraordinary situation as the front yard is actually considered to be in the rear of the house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
  2. That the subject property has at least one of the following characteristics:
    - A. Exceptional narrowness at the time of the effective date of the Ordinance;
    - B. Exceptional shallowness at the time of the effective date of the Ordinance;
    - C. Exceptional size at the time of the effective date of the Ordinance;
    - D. Exceptional shape at the time of the effective date of the Ordinance;
    - E. Exceptional topographic conditions;
    - F. An extraordinary situation or condition of the subject property, or
    - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
  3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
- AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:
8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by George M. O'Quinn, dated, October 25, 2001, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 459 June 4, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SALAMEH BROTHERS CONSTRUCTION CO., VC 01-V-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 55.32 ft. Located at 9111 Ox Rd. on approx. 2.74 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 29. (Moved from 2/5/02, 3/5/02 and 4/9/02)

Chairman DiGiulian called VC 01-V-187. There was no one present to represent the applicant and Chairman DiGiulian stated he would call the case again at the end of the hearing.

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Page 459 June 4, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT C. GUCKIAN, VC 2002-MV-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line and 25.5 ft. from front lot line. Located at 8307 Lilac La. on approx. 11,123 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (5) 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. Robert Guckian, 8307 Lilac Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to permit construction of an addition consisting of a two-car garage to be located 8 feet from the side lot line and 25.5 feet from the front lot line. She said the Zoning Ordinance required a 12 foot minimum side yard and a 30 foot minimum front yard; therefore, variances of 4 feet for the side yard and 4.5 feet for the front yard were requested.

Robert Guckian presented the variance request as outlined in the statement of justification submitted with the application. He stated that he proposed to build a garage addition in which to store multiple vehicles and personal property. He said that the property had an unusual shape and was three sided. He said that the addition would not change the character of the house, construction of the addition would not impact the density of the neighborhood and the variance would allow him to make the best use of his land.

Mr. Pammel asked if the tree in the side yard would be preserved and Mr. Guckian replied that it would have to be removed but he planned to put other trees on the side of the house.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 2002-MV-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 C. GUCKIAN, VC 2002-MV-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line and 25.5 ft. from front lot line. Located at 8307 Lilac La. on approx. 11,123 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (5) 20. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 4, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The house is in character with the neighborhood.
3. The variance not of a great magnitude.
4. The lot is pie shaped.
5. The statement of justification supports the application.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition, shown on the plat prepared by John A. Kephart, dated January 19, 2002, submitted with this application and is not transferable to other

land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 461, June 4, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LORD FAIRFAX, L.L.C., VC 2002-PR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.9 ft. from rear lot line. Located at 8760 Cedar Meadow Ct. on approx. 9,583 sq. ft. of land zoned R-4. Providence District. Tax Map 49-1 ((26)) 7. (Reconsideration Granted 4/23/02)

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 Kroll, Agent, 8569-E Sudley Road, Manassas, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the case had been heard by the Board on April 16, 2002, and subsequent to the approval of the application, a Request for Reconsideration was submitted by the Briar Woods Citizen's Association. She said that on May 9, 2002, the agent for the applicant submitted a letter committing to a revised variance plat.

Ms. Kroll presented the variance request as outlined in the statement of justification submitted with the application. She stated that she had requested a Reconsideration in granting a variance in the minimum required rear yard setback for Lot 7 of the Cedar Woods Community. She said the variance would allow a comparable sized dwelling to be located within 11.9 feet of the rear property line.

Ms. Kroll said the Board felt the variance had met most of the minimum variance requirements when the testimony had previously been heard on April 16, 2002. She said the original variance plat reflected a house with an end-load garage located approximately 15 feet from the right-of-way for Cedar Lane. She said there had also been an alternative plat with a front-load garage and a setback of 42 feet from Cedar Lane that had been presented to the Board at the April 16, 2002, hearing. She said that some Board members expressed a preference for the second variance plat and setback. She said that subsequent to the hearing, the Briar Wood Homeowners Association (HOA) had filed a Request for Reconsideration, citing support for the alternative plan.

Ms. Kroll stated that the applicant had resubmitted the second plat, showing the 42 foot setback from Cedar Lane. She stated that Briar Wood's HOA also requested that the construction of a deck be prohibited off the rear of the proposed dwelling. She said the applicant had agreed to that condition if deemed necessary by the BZA. She said that it was her understanding that during staff's review of the Reconsideration, this requirement had simply not been incorporated into a development condition.

Ms. Kroll reviewed the details of the case that had been presented on April 16, 2002.

Ms. Kroll stated that because the applicant had agreed to all the concerns raised by the Briar Wood's HOA and the Board previously found that the application met all the requirements for a variance, she requested approval by the Board.

Mr. Hart and Ms. Kroll had a brief discussion of the dimensions of the proposed man-made pond and its location.

Chairman DiGiulian called for speakers.

Linda Smith, 2910 Hideaway Road, came forward to speak for the Briar Wood's Citizens Association. She spoke in support of the change that the applicant was willing to make and asked for some reassurance that a deck would not be built.

Ms. Gibb asked Ms. Smith what was her concern about a deck for this particular house. Ms. Smith replied that a deck would be an elevation in close proximity to the proposed man-made pond, and the HOA had been apprehensive about the possibility of accidents.

Chairman DiGiulian closed the public hearing.

Mr. Pammel clarified that the deck would not be permitted in the rear yard as defined by the plat prepared by Charles E. Powell dated April 15, 2002.

Ms. Gibb moved to approve VC 2002-PR-013 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LORD FAIRFAX, L.L.C., VC 2002-PR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.9 ft. from rear lot line. Located at 8760 Cedar Meadow Ct. on approx. 9,583 sq. ft. of land zoned R-4. Providence District. Tax Map 49-1 ((26)) 7. (Reconsideration Granted 4/23/02). 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 4, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is very shallow due to the fact that the detention pond had to be expanded.
4. The applicant has refined the plan for the lot based on suggestions from the Homeowners Association.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;

- F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling, shown on the plat prepared by Charles E. Powell, dated December, 2001, as revised through April 15, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. No deck shall be permitted in the rear yard as defined by the plat prepared by Charles E. Powell, dated April, 2002, as revised through April 15, 2002.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried with a 7-0 vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 12, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 463 June 4, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MEHRAN HOUSHANGNEJAD, A 2002-BR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is parking a wrecker in the R-3 District which exceeds the 12,000 pound gross weight limit for wreckers that are allowed to be parked in a residential district, in violation of Zoning Ordinance provisions. Located at 5520

Hinton St. on approx. 10,856 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (11) 16.

Chairman DiGiulian called for appeal application A 2002-BR-008.

Jack Reale, Zoning Administration Division, stated that the appellant had not sent the legal notices.

Chairman DiGiulian stated that the Board could either dismiss the appeal for lack of interest or schedule it for a future date.

Mehran Houshangnejad came forward to state that he had called the Clerk and sent a letter asking for the hearing to be rescheduled. He said he had not understood the mailing directions for the notices. He said he also had called Monday, May 20, 2002, and had overnighted a letter to ask if the hearing could be rescheduled.

Mr. Reale stated that the appellant had called the office on May 20, 2002, which was the last day in which the notices could be sent, and he discussed the procedures for mailing the legal notices.

Chairman DiGiulian asked how much time would be needed for Mr. Houshangnejad to get the notices out and meet the requirements if the Board approved a deferral. There was a brief discussion about the time and cost involved.

Chairman DiGiulian asked if there was anyone present to speak to the issue of deferral for this case.

Richard Stritter (no given address) came forward to speak in opposition to the deferral. He stated that he was a neighbor of the appellant and that Mr. Houshangnejad had moved into the neighborhood in the middle of January and had parked the tow truck there ever since. Mr. Stritter stated that the appellant had known since January that it was illegal for him to park his truck on the property, and he believed that Mr. Houshangnejad had used up all of his free parking time and he the issue needed to be resolved as soon as possible.

Carol Solters, 5516 Hinton Street, came forward to speak in opposition to the application. She said she agreed with Mr. Stritter. She said Mr. Houshangnejad had been running a towing business out of his house for the past four months and she was against the deferral because of safety issues with the neighborhood children, and noise issues.

Don Bottoms (no address given) came forward to speak in opposition to the deferral. He stated that the neighborhood was a residential area and should not have commercial vehicles. He voiced concerns over the safety of his grandchildren who ride their bikes in the area and had not wanted to allow the problem to continue.

Linda Connor, 5522 Hinton Street, came forward to speak in support of the application. She said she did not care about the deferral, but wanted to say that the tow truck did not bother her.

Mr. Hart asked staff if notices went out to addresses or was nothing sent out. Mr. Reale stated that to his knowledge, the notices had not gone out.

Mr. Hammack stated that the Board had not received a staff report for this case and asked what the reason was for the appeal. Mr. Reale stated that the appellant believed that the tow truck should be allowed in the residential district, and as a wrecker, it did not exceed the 12,000 pound gross vehicle weight.

Mr. Pammel moved to dismiss A 2002-BR-008. Mr. Hart seconded the motion.

Ms. Gibb stated that she was uncomfortable dismissing the case because there had been no staff report. Chairman DiGiulian agreed with Ms. Gibb.

Mr. Kelly stated that he would like to hear what the appellant had to say.

Mr. Houshangnejad stated that he had called on May 20, 2002, the 15<sup>th</sup> and final day for his notices to be sent out. He said the directions he had received in the Notice Packet stated that the receipts had to have



been received by staff at least 20 days prior to the hearing. He said he became confused on how and where to mail the notices. He said he was told the best thing for him to do was to ask to be rescheduled and not to mail the notices out because no one would receive them prior to the hearing, and the hearing would most likely not take place.

Mr. Reale stated that as he recalled the conversation with the appellant, that it was the final day for the notices to be sent out. He said he suggested to the appellant to access the internet in order to locate the names of the absentee owners, and perhaps he could have gotten the notices sent out that afternoon.

Mr. Reale stated that he had suggested if the notices were not sent on that day, then the hearing could not be held. He said when he was pressed for other options by the applicant, he stated that the only other option would be to go before the Board and make a statement regarding the notices.

The motion to dismiss A 2002-BR-008 failed by a 1-6 vote.

Ms. Gibb moved to defer the case to July 25, 2002 at 9:30. Mr. Kelley seconded the motion, which carried by a 7-0 vote.

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Page 465, June 4, 2002, (Tape 1), Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance provisions. Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on approx. 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and 11/27/01) (continued from 1/22/02 and 4/30/02)

Chairman DiGiulian made the disclosure that his firm prepared the survey for the property subject to this appeal and he would not be able to participate in the hearing.

William Shoup, Deputy Zoning Administrator, stated that this case had been deferred a couple of times to allow the appellant to work with the adjacent property owner, Mr. Ciufuentes, and try to get the property cleared up. He stated that currently, the property had not been cleared and there was still a fair amount of debris left on the property and believed that it still constituted a junkyard. He said he had spoken with Ken Sanders, Agent for the appellants, about trying to continue to get the property cleaned.

Mr. Shoup stated that the Zoning Administrator had filed for Injunctive Relief on the Ciufuentes case, and it was his intent to seek a Consent Decree to get Mr. Ciufuentes to agree to do what was necessary to clear the violations on the appellants' property also. He stated that he still believed there was a violation on the property and action needed to be taken to move forward.

Vice Chairman Ribble asked if any progress had been made since the last hearing and Mr. Shoup replied that there had not been any changes. He asked Joe Bakos, Zoning Inspector, to give a brief summary of what he found on inspection the previous day and showed some photographs that had been taken of the property.

Joe Bakos stated that none of the materials that had been found on April 19, 2002, had been removed from the property, with the exception of four compressed gas tanks. He said he found that someone had been to the site and a machine had been used to pull up some of the concrete on the property. He said that in addition to that, fill material had been placed and graded on site and other fill material had been dumped into the tree line.

Mr. Shoup showed photographs that had been taken the day prior to the hearing. He stated that the Department of Public Works and Environmental Services (DPWES) had cited Mr. Ciufuentes for land disturbing activities on the appellants' property. He said that DPWES was part of the County task force which had filed for Injunctive Relief, and the County Attorney's office believed that Mr. Ciufuentes could be

required to also clean up the appellants' property.

Ms. Gibb stated that she had visited the subject property and asked what had to be done on the property besides moving the concrete and tree stumps. She said she thought a lot had been done to clean up the property with the removal of cars, etc. and thought that it was considerably cleaner than when it was first found to be in violation.

There was a discussion and clarification of the material that had been left on the property and what still was left to be cleaned up. Mr. Shoup explained in detail what had to be done in accordance with the other County agencies involved. He said someone had tried to remove some of the concrete, which had been scooped up and placed in a large pile with dirt in a crude manner. He said that was the reason that the clean up on the property needed to be done through a grading plan approved by DPWES.

Mr. Hart questioned if the appellants had access to their lot, did they need Mr. Ciufentes approval to get to their lot, and what did Zoning want them to do. Mr. Shoup replied that access was a problem and the appellants were trying to get access through an easement on Mr. Ciufentes property. He said what they wanted was the property to be cleaned up and they had to hold the owner ultimately responsible.

There was brief discussion regarding a deferral for the case and what would happen while the Consent Decree was being considered.

Ken Sanders, Attorney for the appellant, came forward to speak. He stated that the first violation of vehicular storage on the lot had been cleared up, but the second violation of a junkyard was still in question. He clarified that the adjacent property owner, Mr. Ciufentes, had utilized his clients' property without his consent. He said that the majority of the lot was now free of cars and debris, and questioned whether the land was still considered a junkyard by the Zoning Administration.

Mr. Sanders stated that his client had agreed to work with the County in obtaining a Consent Decree from Mr. Ciufentes. He said he felt that the trees, stumps, etc. did not meet the definition of a junkyard, but were part of the sediment erosion violation issued by DPWES.

Mr. Sanders stated that the appellant could not access his land without permission from Mr. Ciufentes. He said that when Mr. Dowdy sent a letter requesting an easement from Mr. Ciufentes, Mr. Ciufentes returned the letter stating that he was going to clean up the appellant's property and an easement would not be necessary.

Mr. Sanders stated that the County needed to be more specific about the debris on the appellants' property, and tell them exactly what materials were in violation and where they were located. He said that he felt the site of the zoning violation had been cleared and Mr. Dowdy should be cleared of the violation.

Mr. Sanders asked the Board to have a zoning inspector go out to the subject property and mark or spray paint everything that the County wanted removed. Mr. Bakos replied that he could do that, however he had a written inventory of the debris that he had found upon inspection the prior day.

There was a discussion about the marking and removal of the debris.

Mr. Shoup stated that there was another way to access the Dowdy property through a service road. He said he had a problem with the spray painting of the debris that needed to be removed. He said the subject property had been denuded by Mr. Ciufentes with the concrete that he had laid for the junkyard use. He said that Mr. Dowdy had also been cited for filling in the flood plain.

Mr. Pammel made a motion to defer the case until September 10, 2002. He stated that everyone knew what was expected of them and they should go forward with that.

Ms. Gibb questioned the removal of the cement and whether a grading plan would be needed. Mr. Shoup replied that a grading plan would be needed as the removal of the concrete would disrupt much of the land.

Mr. Pammel stated that he would like to leave the concrete issue with the restoration of the land and

Page 467, June 4, 2002, (Tape 1), T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 466

DPWES, and resolve to remove the remainder of the debris. Mr. Hart stated he agreed with Mr. Pammel.

Mr. Pammel moved to defer for decision for A 2001-LE-023 until September 10, 2002, at 9:30 a.m.

Mr. Hammack seconded the motion, which carried by a 6-0-1 vote.

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Page 467, June 4, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SALAMEH BROTHERS CONSTRUCTION CO., VC 01-V-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 55.32 ft. Located at 9111 Ox Rd. on approx. 2.74 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 29. (Moved from 2/5/02, 3/5/02 and 4/9/02).

Chairman DiGiulian recalled VC 01-V-187.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that Juan Bernal, Staff Coordinator, had spoken with a representative of the applicant. Ms. Langdon said the representative told Mr. Bernal that an emergency had occurred that morning and that was why no one had appeared for the public hearing. She said the applicant had requested a deferral and suggested July 23, 2002, at 9:00 a.m.

Mr. Hammack asked why it had been deferred so many times previously. Ms. Langdon stated that staff had been working with the applicant and different issues had come up.

Mr. Ribble asked if the Board had to track down the applicant, and Ms. Langdon replied that was true. She said that Mr. Bernal had to call Mr. Hewitt who had been working with the applicant.

Mr. Pammel stated that he felt that showed a lack of respect for the Board and he made a motion to dismiss the application. The motion failed by a vote of 6-2.

Chairman DiGiulian stated that there had been a motion made to defer the application until July 23, 2002, at 9:00 a.m., and asked if there was a second. Mr. Gibb seconded the motion, which carried by a 7-0 vote.

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Page 467, June 4, 2002, (Tape 1), After Agenda Item:

Approval of May 8, 2001, July 31, 2001, and February 5, 2002 Minutes

Mr. Pammel moved to approve the Minutes for May 8, 2001, July 31, 2001, and February 5, 2002. Mr. Hammack seconded the motion, which carried with a 7-0 vote.

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Page 467, June 4, 2002, (Tape 1), After Agenda Item:

Approval of May 28, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions for May 28, 2002. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

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Page 467, June 4, 2002, (Tape 1), After Agenda Item:

Request for Intent to Defer  
Sun M. Ro, VC 2002-BR-030

Mr. Pammel moved that the request to defer VC 2002-BR-030, Sun M. Ro, to be deferred to 9:00 a.m., July 2, 2002. Ms. Gibb seconded the motion, which carried 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 12:10 p.m.

Minutes by: Judith A. Gobbi

Approved on: March 25, 2003

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 11, 2002. The following Board Members were present: Chairman John DiGiulian Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 469 June 11, 2002, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN AND MARY BYRD, VC 2002-MV-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 41.8 ft. from front lot line and 19.2 ft. from side lot line. Located at 10467 Greene Dr. on approx. 25,225 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 13A.

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 and Mary Byrd, 10467 Greene Drive, Lorton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 41.8 feet from the front lot line and 19.2 feet from the side lot line. A minimum front yard of 50 feet is required; therefore, a variance of 8.2 feet was requested. A minimum side yard of 20 feet is required; therefore, a variance of 0.8 feet was requested.

Mrs. Byrd stated that the variance request was needed because there was termite damage through the existing stoop. She said the property sloped and gathered rain. Ms. Byrd stated that a full front porch would be aesthetically pleasing.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-MV-043 for reason noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN AND MARY BYRD, VC 2002-MV-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 41.8 ft. from front lot line and 19.2 ft. from side lot line. Located at 10467 Greene Dr. on approx. 25,225 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 13A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The topography slopes on the front of the property.
4. The house is sited well to the front of the fairly deep lot, and close to the cul-de-sac.
5. There are converging lot lines on the property that necessitate the variance.
6. The side yard variance is minimal and the front yard variance is justified.
7. The request will not change the character of the neighborhood and will enhance the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by Larry N. Scartz, dated March 16, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MARGOT HENNINGS, VC 2002-PR-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. and eave 14.5 ft. from front lot line and to permit walls 8.6 ft. and 8.8 ft. in height to remain in side yard. Located at 3440 Joan Ct. on approx. 10,981 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((2)) 58.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jané Kelsey, Jané Kelsey and Associates, 4041 Autumn Lane, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit walls 8.6 and 8.8 feet in height. A maximum wall height of 7 feet is allowed; therefore, variances of 1.6 and 1.8 feet were requested respectively. Ms. Josiah stated that the applicant withdrew the request for an addition.

Ms. Kelsey, the applicant's agent, presented the variance request as contained in the statement of justification. She stated that the applicant withdrew the request for an addition. Ms. Kelsey stated that the walls were found to be too high when the applicant applied for the variance for the addition. She said the applicant built the fence in order to have use of their yard. Ms. Kelsey said the height of the fence was dictated by the size of the house. She presented photographs of other fences in the neighborhood. Ms. Kelsey submitted letters in support of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002- PR -039 for reason noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARGOT HENNINGS, VC 2002-PR-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. and eave 14.5 ft. from front lot line and to permit walls 8.6 ft. and 8.8 ft. in height to remain in side yard. **(THE APPLICANT WITHDREW THE REQUEST FOR CONSTRUCTION OF ADDITION)** Located at 3440 Joan Ct. on approx. 10,981 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((2)) 58. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 2002; 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 area is a unique area of the County where the architecture dates back to the 1950s and the walls are in keeping with that style of architecture and is compatible with the adjoining properties in the community.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;

- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the walls and is applicable only to the subject property as shown on the plat prepared by Alexandria Surveys International, LLC, dated December 1, 2000, as revised through March 28, 2002, 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. Hammack seconded the motion, which carried by a vote of 7-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 11, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MURRAY A. BLOOM, VC 2002-BR-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 19.4 ft. Located at 9029 Ashmeade Dr. on approx. 10,774 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((16)) 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. Murray Bloom, 9029 Ashmeade Drive, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition 19.4 feet of the total side yard. A total side yard of 24 feet is required; therefore, a variance of 4.6 feet was requested.



Mr. Bloom stated that the request was to convert an existing carport to a garage. He said the request was consistent with other homes in the neighborhood because they had garages. Mr. Bloom said the neighbors were in support of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002- BR-042 for reason noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MURRAY A. BLOOM, VC 2002-BR-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 19.4 ft. Located at 9029 Ashmeade Dr. on approx. 10,774 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((16)) 16. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 2002; 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 existing carport does not cause any negative impacts on the neighbors and the enclosure with walls would have no impact.
4. The existing structure is substantial with an arched roof.
5. The lot lines are somewhat converging towards the back of the property, which created the problem with distance at the rear corner of the garage.
6. An almost identical variance was approved on the same street to allow enclosure of a similar 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 garage addition shown on the plat prepared by Alexandria Surveys International, LLC, dated February 1, 2002, as revised through March 6, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel and Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 474 June 11, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      KENNETH AND RUBY KRANTZ, VC 2002-MV-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 8.0 ft. and 14.0 ft. and addition 9.0 ft. from side lot line. Located at 3605 Surrey Dr. on approx. 17,415 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((5)) 11A. (Admin moved from 5/28/02 per appl req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Lane, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant withdrew the request for Deck B; therefore, the applicant requested a variance to permit one deck 8.0 feet and a sunroom addition 9.0 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, variances of 7.0 feet and 6.0 feet were requested respectively.

Ms. Kelsey stated that the applicant reduced the amount of the variance from the previous application and deleted Deck B with its associated stairs. She said there were two French doors that opened to nowhere and the applicant's incorrectly assumed that they were there for the purpose of opening to some sort of deck, porch or sunroom. Ms. Kelsey stated that the lot had several physical characteristics that prevented the applicants from having reasonable use of the land. She said the sloped topography was a hardship created by the builder. She said the variance request was in character with the neighborhood. Ms. Kelsey stated that there was no other feasible location for the addition.

Mr. Hart asked if trees would have to be removed. Ms. Kelsey replied that the applicant had planted the trees and they would remain.

Mr. Hart asked if the applicant evaluated the possibility of having the sunroom off the door to the left, but not both. He asked if there was a reason the structure needed to be off both of the doors as opposed to just one. Ms. Kelsey replied that it would be difficult because of the design and the way the house was wired.

Chairman DiGiulian called for speakers.

Jeff Fox, 3602 Surrey Drive, came forward to speak in support of the application. He said the addition would not be detrimental to the neighborhood and would not injure property values. Mr. Fox stated that the screening provided was sufficient.

Mrs. Donald West, 3609 Surrey Drive, came forward to speak in opposition of the application. She stated that she shared a common lot line with the applicant and was opposed to the ramp. Mrs. West stated that the addition was abuse and disrespect for adjacent property owners.

Ms. Kelsey stated, in her rebuttal, that a ramp for Accessibility did not require a variance. She said the ramp was being built to accommodate a handicapped person. Ms. Kelsey stated that the request was reasonable and there would be no adverse effect on the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 2002-MV-046 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH AND RUBY KRANTZ, VC 2002-MV-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 8.0 ft. and 14.0 ft. and addition 9.0 ft. from side lot line. **(THE APPLICANT WITHDREW THE REQUEST FOR CONSTRUCTION OF A DECK 14.0 FEET FROM SIDE LOT LINE)** Located at 3605 Surrey Dr. on approx. 17,415 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((5)) 11A. (Admin moved from 5/28/02 per appl req.) 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 11, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The addition has been reduced from the previous variance application but still provides too much bulk on the proposed side of the 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. 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 19, 2002.

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Page 476, June 11, 2002, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE & JOY WALSH, VC 2002-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 9.6 ft. and 11.4 ft. from side lot line and 25.1 ft. from front lot line. Located at 7603 Maydan La. on approx. 16,212 sq. ft. of land zoned R-1 and R-3. Providence District. Tax Map 39-4 ((9)) A and 39-4 ((17)) 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. Laird Ueberroth, Agent, 1900 Foxhall Road, 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 the construction of a sunroom addition 9.6 feet from the side lot line, a porch 11.4 feet from the side lot line, and a garage 25.1 feet from the front lot line. A minimum side yard of 12 feet is required; therefore, variances of 2.4 feet and 0.6 feet were requested respectively for the sunroom addition and the porch. A minimum front yard of 30 feet is required; therefore, a variance of 4.9 feet was requested for the garage.

Mr. Ueberroth stated that the variance request was to enlarge the kitchen, add a family room and a garage. He said the property sloped steeply causing the requested location to be the only place for the addition. Mr. Ueberroth stated that the variance would have no negative impacts on the neighborhood. He said the applicant tried to minimize the impact on the setback requirements.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002- PR-037 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

GEORGE & JOY WALSH, VC 2002-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 9.6 ft. and 11.4 ft. from side lot line and 25.1 ft. from front lot line. Located at 7603 Maydan La. on approx. 16,212 sq. ft. of land zoned R-1 and R-3. Providence District. Tax Map 39-4 ((9)) A and 39-4 ((17)) 17. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 2002; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony indicating compliance with the required standards for a variance.
- 3. The topography of the lot is a sharp drop off from the rear to the front of the property.
- 4. The applicants have tried to locate the additions in such a way as to minimize the encroachment into the side yards.
- 5. The second variance request is minimal.
- 6. The lot is shallow and unusually 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 additions as shown on the plat prepared by George M. O'Quinn, dated, February 15, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 478 June 11, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN FISCHER, VC 2002-MA-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 4.0 ft. from side lot line and addition 27.0 ft. from front lot line and 6.0 ft. high fence to remain in front yard of a corner lot. Located at 3117 Worthington Ci. on approx. 9,465 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (E) 1. (Concurrent with SP 2002-MA-019).

9:00 A.M. SUSAN FISCHER, SP 2002-MA-019 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 7.7 ft. from side lot line and 26.4 ft. and 17.1 ft. from front lot lines of a corner lot. Located at 3117 Worthington Ci. on approx. 9,465 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (E) 1. (Concurrent with VC 2002-MA-041).

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 Fischer, 3117 Worthington Circle, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit a dwelling to remain 7.7 feet from a side lot line, 26.4 feet from a front lot line and 17.1 feet from the other front lot line of a corner lot. A minimum side yard of 12.0 feet and a minimum front yard of 30.0 feet are required for the R-3 district; therefore, modifications of 4.3 feet for the side yard and 3.6 feet and 12.9 feet for the front yards of a corner lot were requested. The applicant also requested variances in order to construct a deck to be located 4.0 feet from a side lot line and an addition 27.0 feet from a front lot line and for a fence to remain in the front yard of a corner lot. A minimum side yard of 12.0 feet is required for the deck while a minimum of 30.0 feet is required for the addition; therefore, variances of 8.0 feet for the deck and 3.0 feet for the addition and 2.0 feet for the fence were requested.

Ms. Fischer stated that the house was constructed in 1941. She said the lot was rectangular with 2 front yards. Ms. Fischer stated that the builder made the error. She said she wanted to make the house more modern by enclosing the existing deck and to build a deck. Ms. Fischer stated that the fence did not sit in the street and was needed to provide privacy and to screen the pool. She said the deck would connect to the existing stoop on the side of the house, which was 4.0 feet from the property line.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 2002-MA-019 for reason noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

SUSAN FISCHER, SP 2002-MA-019 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 7.7 ft. from side lot line and 26.4 ft. and 17.1 ft. from front lot lines of a corner lot. Located at 3117 Worthington Ci. on approx. 9,465 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (E) 1. (Concurrent with VC 2002-MA-041). 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 11, 2002; 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 as shown on the plat prepared by Brian W. Smith, dated September 28, 2001, as revised through April 1, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley moved to approve VC 2002-MA-041 for reason noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN FISCHER, VC 2002-MA-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 4.0 ft. from side lot line and addition 27.0 ft. from front lot line and 6.0 ft. high fence to remain in front yard of a corner lot. Located at 3117 Worthington Ci. on approx. 9,465 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (E) 1. (Concurrent with SP 2002-MA-019). 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 11, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.



- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This Variance is approved for the location of a deck, addition, and fence as shown on the plat prepared by Brian W. Smith, dated September 28, 2001, as revised through April 1, 2002, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant addition time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Hart and Mr. Hammack voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DILIP P. & ALISON K. KAMAT, SP 2002-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 14.22 ft. from side lot line. Located at 1185 Windrock Dr. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-4 ((27)) 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. Dilip and Alison Kamat, 1185 Windrock 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 special permit to permit a deck 14.22 feet from the side lot line. A minimum side yard of 20 feet is required; therefore a request of 5.78 feet was required.

Mrs. Kamat stated that the requested location was the only place for the deck. She said the request would not adversely affect the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2002-DR-018 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DILIP P. & ALISON K. KAMAT, SP 2002-DR-018 Appl. under Sect(s). 8-916 of the Zoning Ordinance to permit construction of deck 14.22 ft. from side lot line. Located at 1185 Windrock Dr. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-4 ((27)) 2. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 18-401 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 as shown on the plat prepared by Robert P. Cochran, dated, February 8, 2002, as revised through March 6, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this 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. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this special permit. //

Page 483, June 11, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JENIFER W. PICKETT DUFFY, VC 02-H-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 95.91 ft. Located at 9101 Old Courthouse Rd. on approx. 1.27 ac. of land zoned R-2. Hunter Mill District. Tax Map 28-4 ((1)) 41. (Reconsideration granted 4/30/02)

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 Jenkins, Agent, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He said the application was originally heard by the BZA on April 16, 2002, and was denied by a vote of 4-1; consequently, the BZA granted a reconsideration at the applicant's request. The applicant proposed to subdivide one lot into two lots, with proposed Lot 2 having a lot width less than the minimum lot width required by the Zoning Ordinance. Lot 2 was proposed to have a lot width of 95.91 feet. A minimum width of 100 feet is required by the Zoning Ordinance for the R-2 District. The two proposed lots would be accessed from a shared driveway to Old Courthouse Road. Lot 1 was proposed to contain 25,722 square feet while Lot 2 was proposed to contain 25,815 square feet, which resulted in a density of 1.57 dwelling units per acre.

Mr. Jenkins presented the variance request as outlined in the statement of justification submitted with the application. He said the subject parcel was part of an R-2 District that had been an R-2 since 1967. Mr. Jenkins said the property was 1.27 acres of land and if the variance was approved, it would result in a density of 1.57. He said that the density was below the requirement for the R-2 District, below the Comprehensive Plan range, below the subdivision to the south and west, Wexford 1, and below the subdivision of Wexford South. Mr. Jenkins stated that each lot would exceed 25,000 square feet, which was well above the average in Wexford 1 and Wexford South. He said the proposed lots met or exceeded all applicable bulk or size regulations and it met all setback requirements of R-2 District regulations. Mr. Jenkins stated that proposed Lot 1 satisfied the lot width requirements, and proposed Lot 2 had a lot width gap of 4 feet. He said the average lot size of Wexford 1 was 15,900 square feet. Mr. Jenkins stated that part of the new information submitted to the Board disclosed that Wexford 1 was not a conventional R-2 subdivision but that it received administrative ability to have smaller lots in the 1960s. He submitted a subdivision plat of Wexford 1 reflecting that 73% of the lots were below 100 feet in lot width. Mr. Jenkins stated that all of the lots in Wexford 1 that abutted the subject property had a lot width below 100 feet. He said a pattern had already been developed in the neighborhood. Mr. Jenkins said variances on 3 lots were granted after Wexford 1 was approved. He said approval of the variance would cause no detrimental impact on adjacent parcels, would not change the character of the zoning district, and approval would be in harmony with the Ordinance and the Comprehensive Plan. Mr. Jenkins stated that the lot also suffered from exceptional topographical conditions. He said the applicant would not be able to use the property for its intended purposes and approval of the application would cause no public harm.

Ms. Gibb asked about the administrative decision that made the property an R-2. Mr. Jenkins stated that in that era, people were entitled to rezone through the County Engineer to request smaller lots. He said the decision stated that there was no minimum lot width required for Wexford 1.

Mr. Hart asked when Lot 41 was created. Mr. Jenkins stated that Lot 41 was acquired in 1969.

Mr. Pammel asked if the applicant had considered other uses for the property. Mr. Jenkins stated that if the neighbors were unwilling to accept two houses on the property, he did not think exploring other uses would be accepted.

Chairman DiGiulian called for speakers.

Jennifer Pickett-Duffy and Mark Pickett came forward to speak in support of the application. They presented the history of the property and stated that they just wanted to make the best use of the property and were not trying to deface the land.

The following speakers came forward to speak in opposition: Phillip Kinney, President, Wexford Homeowners Association; Christine Kinney, 1731 Kilarney Court; Pauline Dameron, 9101 Westerholme Way; Shirley Knowles, 9103 Westerholme Way; Karen Nappi, 9106 Westerholme Way; Kathryn Russiello, 9104 Westerholme Way; and Robert Rothstein, 9029 Old Court House Road. The speakers expressed concerns relating to water runoff, soil problems, land disturbance, erosion, the applicant wanting the benefit

of cluster status without cost, hazards during construction, no undue hardship, lack of privacy, and that the speaker preferred one house instead of two houses on the property.

Mr. Jenkins stated in his rebuttal, that the existing sanitary sewer easement would have to comply with stormwater management regulations. He said the proposal was in harmony with the neighborhood and in compliance with the required setbacks. Mr. Jenkins stated that the applicant was agreeable to planting more trees.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said there were valid arguments presented by both sides of the issue. He said he wanted to clarify a couple of issues. Mr. Pammel said he was on County staff in 1967 and he remembered that he had reviewed the subject application and was the staff member that made the recommendation to the Planning Commission and the Board of Supervisors. He said his recollection was that there was not an issue of whether it was cluster or whether it was conventional but that there was an administrative option available for the cluster and that was handled by the Planning Engineer. He said Wexford 1 submitted an application for a cluster development, open space, and a homeowner's association, which were all subsequently approved. Mr. Pammel said the applicant was not requesting a cluster, or that they be tied in with Wexford 1. He said what they were doing was submitting a request that stood on its own merits. Mr. Pammel said the two proposed parcels were approximately 26,000 square feet each, and providing their own open space on their site. He said it was not a valid argument to say that they were getting in under the envelope of cluster. Mr. Pammel said they were freestanding and met the requirements of the Ordinance. He said the applicant was trying to efficiently use the land to obtain the maximum use of it. Mr. Pammel stated that the variance requested was minimal and it was a reasonable request. He said on the other hand, he had concerns about erosion and the fact that the parcel sat high and it would have to be developed with a great deal of sensitivity to ensure that there was no damage to the surrounding properties. Mr. Pammel said he did not receive that assurance from the applicant. He said he thought the Board needed more time and assurances from the developer that it would be developed properly. Mr. Pammel moved to deny VC 02-H-005 for the reasons noted in the Resolution.

Ms. Gibb stated that she did not support the motion. She said it was just happenstance that the lot did not meet the requirements. Ms. Gibb said the variance request was minimal and she was persuaded that the applicant suffered an undue hardship. She said she felt the applicant would be losing 50% of their investment because of 4.9 feet. Ms. Gibb said the history was consistent with the deeds and the zoning maps. She said she would support the variance request for those reasons.

Mr. Hart said this was a close case. He said the quantum of the variance was very slight and that made the decision more difficult. Mr. Hart said he would not necessarily conclude that the potential erosion issue would be sufficient to deny the variance. He said on a case by case basis in a package of larger problems, a situation that resulted in a division of property with construction at the edge of it and uphill from other property might be within the scope of one or more of the variance criteria. Mr. Hart said he did not think that was necessarily dispositive in the subject application, although it was a reasonable observation for a Board member to make in the context of a motion. He said the problem he had was whether there was an undue hardship, except that the applicant did not create it. Mr. Hart said he did not think geometry, in and of itself, could constitute the hardship standing alone. He stated that he was also not convinced that the financial aspect of it constituted the hardship. Mr. Hart said the destiny of the property was linked to Lot 42, and if he understood the Comprehensive Plan provision, the recommendation was for development of 2-3 houses per acre. He said if the ownership of Lot 42 changed, and the two properties developed together at a range of 2-3 houses per acre, there would many more new homes on the two lots than just the two proposed houses. He said sometimes two lots with development conditions was better than the unknown.

Mr. Kelley stated that he would not support the motion because the erosion problems could be addressed.

Chairman DiGiulian stated that he would not support the motion because the erosion problems would be addressed at the time of site plan approval.

The motion failed by a vote of 2-4. Chairman DiGiulian, Mr. Kelley, Ms. Gibb, and Mr. Hammack voted against the motion. Mr. Ribble was not present for the vote.

Ms. Gibb moved to approve VC 02-H-005 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JENIFER W. PICKETT DUFFY, VC 02-H-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 95.91 ft. Located at 9101 Old Courthouse Rd. on approx. 1.27 ac. of land zoned R-2. Hunter Mill District. Tax Map 28-4 ((1)) 41. (Reconsideration granted 4/30/02) 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 11, 2002; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of Lot 41 as shown on the plat prepared by William G. Hawes, dated September, 2001, as revised through March 12, 2002. 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. Right-of-way of forty-five (45) feet, as delineated on the variance plat, shall be dedicated to the Board of Supervisors, in fee simple, at the time of subdivision review or upon demand by Fairfax County, whichever occurs first.
3. A single driveway shall provide access to both lots. If necessary, as determined by the Director of the Department of Public Work and Environmental Services (DPWES), an access easement and shared maintenance agreement for the single access driveway traversing Lot 1 to Lot 2 shall be recorded. The driveway shall meet the requirements of the Public Facilities Manual (PFM). The applicant shall clear any vegetation adjacent to the existing paved surface in order to provide adequate sight distance along Old Courthouse Road.
4. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and grading for construction shall be the minimum amount feasible as determined by DPWES and shall be no greater than shown on the plat. Prior to any land disturbing activities for construction, a pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction.
5. A row of evergreen trees shall be planted to effectively screen the proposed dwelling on Lot 1 from adjacent Lot 17. The evergreens shall be a minimum of 8.0 feet in height, at time of planting, and shall be located between the western lot line and the dwelling on proposed Lot 1. A determination on the species and planting location of the trees shall be made in consultation with the Urban Forestry Division, DPWES.

This approval, contingent upon above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Pammel voted against the motion. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this variance.

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Page ~~486~~ June 11, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., SP 2002-MA-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 2.1 ft. from side lot line and 5.4 ft. from rear lot line. Located at 6447 Holyoke Dr. on approx. 9,367 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 30. (Admin moved from 5/7/02 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. Lori Greenlief, Agent, 14368 Nandina Court, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an addition to remain 2.1 feet from the side lot line and 5.4 feet from the rear lot line. A minimum side yard of 15 feet and a minimum rear yard of 11.6 feet are required; therefore, modifications of 12.9 feet and 6.2 feet were requested respectively.

Ms. Greenlief stated that the error was discovered when the applicant filed for a variance. She said the error was not the fault of the applicant. Ms. Greenlief stated that application met the required standards and there had been no complaints from the neighbors. She submitted photographs depicting the character of the neighborhood. Ms. Greenlief stated that many variances had been approved in the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-MA-011 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LINCOLNIA EDUCATIONAL FOUNDATION, INC., SP 2002-MA-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 2.1 ft. from side lot line and 5.4 ft. from rear lot line. Located at 6447 Holyoke Dr. on approx. 9,367 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 30. (Admin moved from 5/7/02 for notices) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 11, 2002; 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 (detached garage) as shown on the plat prepared by George M. O'Quinn, Land Surveyor, dated November 21, 2001, as submitted with this application and is not transferable to other land.
3. A Building Permit shall be obtained and approval of final inspection shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 19, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 488, June 11, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SUN M. RO, SP 2002-BR-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 deck to remain 2.5 ft. from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with VC 2002-BR-030). (Def from 5/21/02 for decision only)

9:00 A.M. SUN M. RO, VC 2002-BR-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. from side lot line and eave 0.5 ft. from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with SP 2002-BR-014). (Def from 5/21/02 for decision only)

Chairman DiGiulian noted that VC 2002-BR-030 and SP 2002-BR-014 was deferred to July 2, 2002.

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Page 488 June 11, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MEADOWS FARMS, INC. AND BETTY M. MEADOWS, A 2001-DR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' plant nursery business has been expanded without Board of Supervisors' approval of a Category 5 Special Exception, that building additions and other structures have been constructed/erected without Building Permit approval, and that the sale of certain items constitutes the establishment of an activity that is most similar to a retail sales establishment,



Page 489, June 11, 2002, (Tape 1), MEADOWS FARMS, INC. AND BETTY M. MEADOWS, A 2001-DR-033, continued from Page 488

all in violation of Zoning Ordinance provisions. Located at 11254 Leesburg Pi. on approx. 5.0 ac. of land zoned R-1. Dranesville District. Tax Map 11-2 ((1)) 22C. (Admin moved from 2/12/01, 1/29/02, and 4/9/02)

Chairman DiGiulian noted that A 2001-DR-033 had been administratively moved to October 15, 2002.

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Page 489, June 11, 2002, (Tape 1), After Agenda Item:

Approval of December 4, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

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Page 489, June 11, 2002, (Tape 1), After Agenda Item:

Approval of a revised plat  
Charles Soper & Karen Quinn - VC 02-M-002

Mr. Hart moved to approve the Revised Plat. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

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Page 489, June 11, 2002, (Tape 1), After Agenda Item:

Approval of June 4, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:13 p.m.

Minutes by: Regina Thorn Corbett

Approved on: October 15, 2002

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John P. DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 18, 2002. The following Board Members were present: Chairman John DiGiulian; James Hart; James Pammel, Robert Kelley and John Ribble. Nancy Gibb and Paul Hammack were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 491, June 18, 2002, (Tape 1), Scheduled case of:

9:00 A.M. AURANGZAIB & AMINA E. KALEEM, VC 2002-MV-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. and chimney 7.33 ft. from side lot line. Located at 9009 Kiger St. on approx. 21,780 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 97-4 ((3)) 58.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Aurangzaib Kaleem, 9033 Gavelwood Court, Springfield, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a dwelling with a protruding chimney to be located 10.0 feet and 7.33 feet respectively from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 10 feet was requested for the dwelling. The Zoning Ordinance permits an extension of 3.0 feet into the minimum required yard for a chimney; therefore, a variance of 9.67 feet was requested for the chimney.

Mr. Kaleem presented the variance request as outlined in the statement of justification submitted with the application. He said that his family was expanding and they needed a larger home. He explained that he had lived in the County for the past 22 years and he wanted to continue to do so. He submitted photographs illustrating the unusual topography of the lot. He said there was a utility pole that prevented full usage of the front of the lot for the driveway. He stated that the impact of the proposed dwelling on the neighboring properties would be minimal. He informed the Board that there was full neighborhood support. He requested a waiver of the 8-day waiting period.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-MV-053 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

AURANGZAIB & AMINA E. KALEEM, VC 2002-MV-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. and chimney 7.33 ft. from side lot line. Located at 9009 Kiger St. on approx. 21,780 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 97-4 ((3)). 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 18, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The variance request is of an unusual nature.
3. The property contains topographical conditions that facilitate the need for the variance.
4. The property is narrow for the zoning district in which it is located.

5. The applicants provided testimony indicating compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the dwelling and chimney shown on the plat prepared by H. Aubrey Hawkins Associates, Ltd., dated February 28, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 4-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

Page 493 June 18, 2002, (Tape 1), AURANGZAIB & AMINA E. KALEEM, VC 2002- MV-053, continued from Page 492

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 493 June 18, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SARA PRICE, SP 2002-DR-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.3 ft. from side lot line. Located at 819 Lawton St. on approx. 34,747 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((14)) A and 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. Sara Price, 819 Lawton Street, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested approval of a special permit for a reduction to minimum yard requirements based on an error in building location to permit a shed to remain 2.3 feet from the north side lot line. The Zoning Ordinance requires a minimum 20-foot side yard; therefore, a modification of 17.7 feet was requested.

There was conversation between the Board and staff as to whether or not the application was viable because the shed was located on an outlot. It was determined that the outlot and lot were considered to be one all one lot with respect to building purposes.

Ms. Price presented the special permit application as outlined in the statement of justification submitted with the application. She explained that the outlot sloped down severely from the primary lot, which made it useless for building purposes. She said that the shed was placed at the corner of the outlot at the edge of the slope. She stated that she was not aware that the height measurement should be taken from the lowest area of the lot and in error the measurement was taken from the base of the shed to the peak. She acknowledged that the error was made in good faith and she stopped the construction process as soon as the error was discovered.

Mr. Hart asked if the existing trees and bushes on the property provided adequate screening of the shed from the adjacent properties. Ms. Price replied that there were a number of trees and shrubs on the property that adequately addressed screening.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-DR-020 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SARA PRICE, SP 2002-DR-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.3 ft. from side lot line. Located at 819 Lawton St. on approx. 34,747 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((14)) A and 1. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 18, 2002; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the accessory storage structure (shed) shown on the plats prepared by Andrew P. Dunn and Jon Kline & Assoc. Architects, dated January 5, 2002 and March 11, 2002, respectively, 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 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 494, June 18, 2002, (Tape 1), Scheduled case of:

9:00 A.M. EDUARDO E. VALDEZ, SP 2002-LE-013 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 4511 Tipton La. on approx. 13,349 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (C) 5. (Moved from 5/21/02 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. Eduardo Valdez, 4511 Tipton Lane, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested approval to permit modification to the limitations on the keeping of animals to allow five dogs on a lot containing 13,349 square feet. The Zoning Ordinance requires a lot area of at least 20,000 square feet for keeping five adult dogs. Therefore, a special permit was requested for the keeping of one dog greater than that permitted.

Mr. Valdez presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had cut down on the number of dogs from 8 to 5 since the Board had denied his first special permit application in 2001. He contended that the size of his lot allowed between 4 and 6 dogs and 5 dogs should be allowed. He submitted a letter of support from an adjacent neighbor. He explained that the dogs were well cared for and the lot was maintained. He maintained that there were false statements in a letter that J.D. Taylor submitted to the Board. He said that the dogs were not only pets but also a hobby for him. He clarified that he was not a breeder.

Mr. Kelley asked the applicant to clarify that his position regarding the letter from J.D. Taylor. Mr. Valdez replied that Mr. Taylor's letter contained false allegations. Mr. Kelley asked if the five dogs were the same dogs that were the subject of the first special permit that the Board denied. Mr. Valdez replied that was correct. He said the five dogs remaining were from the original eight that were the subjects of the last hearing.

Mr. Hart asked if there were any occasions where the dogs got loose in the neighborhood. Mr. Valdez stated that had never occurred. Mr. Hart asked if the dogs were all pit bulls. Mr. Valdez replied that he preferred to call them American Bull Terriers. Mr. Hart referred to allegations that the applicant had shown a videotape of a dog fight. Mr. Valdez replied that the tape was a documentary and neither he nor his dogs were in the video.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley said that the applicant had gone to great lengths to reduce the number of dogs on the property but he was still in violation with five dogs. He stated that he believed the applicant's testimony regarding the humane treatment of the animals and he suggested that the Board give the applicant 6 months to come into compliance.

Mr. Hart stated that the applicant was a responsible dog owner who took good care of his animals.

Mr. Kelley moved to deny SP 2002-LE-013 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EDUARDO E. VALDEZ, SP 2002-LE-013 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 4511 Tipton La. on approx. 13,349 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (C) 5. (Moved from 5/21/02 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 June 18, 2002, 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 a conscientious effort since the last hearing to bring the number of dogs he

has into compliance; however, he is still over the maximum amount allowed.

3. The Board believed the applicant's testimony.

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). 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

\*Mr. Hart seconded the motion, which failed by a vote of 3-1. Mr. Pammel voted against the motion. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002.

\*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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Page 496 June 18, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MARGARET JENNIFER SANTLEY, VC 2002-PR-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.3 ft. from front lot line. Located at 2910 Cleave Dr. on approx. 8,727 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 51-3 ((3)) 102.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Margaret Jennifer Santley, 2910 Cleave Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 25.3 feet from the front lot line. The Zoning Ordinance requires minimum front yard of 30 feet; therefore, a variance of 4.7 feet was requested.

Ms. Santley presented the variance request as outlined in the statement of justification submitted with the application. She explained that her husband was ill and could not ascend the staircase so an expanded master bedroom and bathroom was needed on the ground floor of the home. She said the addition would be in character with the neighborhood.

Chairman DiGiulian stated that the Board had received one letter in support of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-PR-054 for the reason stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET JENNIFER SANTLEY, VC 2002-PR-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.3 ft. from front lot line. Located at 2910 Cleave Dr. on approx. 8,727 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 51-3 ((3)) 102. 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 18, 2002; 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 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, shown on the plat prepared by George M. O'Quinn, dated March 19, 2002, as revised through April 2, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 498 June 18, 2002, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM AND SHARON MILLS, VC 2002-BR-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.0 ft. from rear lot line. Located at 5302 Dunleigh Ct. on approx. 9,241 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((14)) 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. William and Sharon Mills, 5302 Dunleigh Court, Burke, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a one-story addition to be located 23.0 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 2.0 feet was requested.

Mr. Mills presented the variance request as outlined in the statement of justification submitted with the application. Mr. Mills stated that the variance request was minimal and no trees or shrubbery would be removed. He said that the addition would be in character with the neighborhood and they had obtained approval from the homeowners association as well as the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-BR-049 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

WILLIAM AND SHARON MILLS, VC 2002-BR-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.0 ft. from rear lot line. Located at 5302 Dunleigh Ct. on approx. 9,241 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((14)) 26. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 18, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is unusually shaped in that it is shallow and the side lot lines converge.
4. The quantum of the variance is only 2.0 feet and the Board has granted 3 variances of greater measurements in the immediate vicinity.
5. The photographs and testimony indicated that there would not be any negative impact on any neighbors.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by Scott W. Sterl, dated March 15, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 500, June 18, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      JEFFERSON D. TAYLOR, SP 2002-PR-022 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 7.9 ft. from rear lot line and 9.9 ft. from side lot line. Located at 9202 Ponce Pl. on approx. 24,749 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((12)) 94.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jefferson D. Taylor, 9202 Ponce Place, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for reduction to minimum yard requirements based on an error in building location to permit an accessory storage structure consisting of a storage shed to remain 7.9 feet from the rear lot line and 9.9 feet from the side lot line. The Zoning Ordinance requires a minimum rear yard of 12.4 feet and a minimum side yard of 15 feet; therefore, modifications of 4.5 feet for the rear yard and 5.1 feet for the side yard were requested.

Mr. Taylor presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the lot lines on the property were skewed and because of this he mistakenly placed the shed too close to the lot line. He said that the error was made in good faith and requested that the Board approve the application. He submitted a petition of support from his neighbors.

Mr. Kelley asked the applicant if there was electricity in the shed. Mr. Taylor replied that there was not.

Mr. Kelley asked Paul McAdam, Senior Zoning Inspector, if the shed was well constructed or if it was an eyesore. Mr. McAdam replied that the shed was well constructed and was in character with the neighborhood. He explained that the topography of the lot was very odd.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 2002-PR-022 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFERSON D. TAYLOR, SP 2002-PR-022 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 7.9 ft. from rear lot line and 9.9 ft. from side lot line. Located at 9202 Ponce Pl. on approx. 24,749 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((12)) 94. 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 18, 2002; 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 shed, as shown on the plat prepared by George M. O' Quinn, dated March 26, 2002, 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 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. DALE E. WICKIZER, VC 2002-SP-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 20.2 ft. and addition 22.5 ft. from rear lot line. Located at 7201 Trappers Pl. on approx. 10,744 sq. ft. of land zoned R-2

(Cluster). Springfield District. Tax Map 88-4 ((5)) 392.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dale E. Wickizer, 7201 Trappers Place, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested two variances and the first was to permit the enclosure of a carport for a garage addition to be located 9.8 feet from the side lot line such that side yards total 20.2 feet. The second variance request was to permit a living room addition to be located 22.5 feet from the rear lot line. The Zoning Ordinance requires minimum total side yards of 24 feet. The applicant met the side yard requirement of 8.0 feet; however, a variance of 3.8 feet for the total side yards was requested. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 2.5 feet was requested for the living room addition.

Mr. Wickizer presented the variance request as outlined in the statement of justification submitted with the application. He stated that the enclosure of the carport was needed to provide shelter for their vehicle and the living room addition was needed to provide additional living space for their family. He explained that the variance for the living room addition was minimal and it would be in character with the neighborhood. He said that the shape of the lot was unusual.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-SP-050 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DALE E. WICKIZER, VC 2002-SP-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 20.2 ft. and addition 22.5 ft. from rear lot line. Located at 7201 Trappers Pl. on approx. 10,744 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-4 ((5)) 392. 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 18, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property contained unique characteristics in terms of the shape.
3. The lot is extremely shallow in that the depth of the lot at mid point is less than 100 feet.
4. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of additions as shown on the plat prepared by Larry N. Scartz, dated, January 17, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 503 June 18, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SHIRLEY L. ROUSE, VC 2002-LE-048 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 5413 Theftford Pl. on approx. 12,258 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((7)) 132.

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 Rouse, 5413 Theftford Place, Alexandria, Virginia,

replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a two-car garage to be located 4.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 8.0 feet was requested.

Ms. Rouse presented the variance request as outlined in the statement of justification submitted with the application. She submitted a petition in support of the application along with several photographs of the property. She explained that only one tree would need to be removed for the construction of the garage. She stated that the proposed placement of the garage would allow space for her garden and provide adequate space to back cars out from the garage. She stated that the porch was elevated approximately 10 feet off of the ground. She said that she needed the garage to provide shelter for her vehicles not only from the weather but also from falling acorns from her trees. She informed the Board that there were many homes in the neighborhood with garages that were similarly located.

Chairman DiGiulian called for speakers.

Lenore Colin, 5412 Bedford Park, came to speak in support of the application. She stated that she had no objections to the proposed garage. She said many other neighbors were also in support.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-LE-048 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

SHIRLEY L. ROUSE, VC 2002-LE-048 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 5413 Thetford Pl. on approx. 12,258 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((7)) 132. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 18, 2002; 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 the granting of a variance.
3. Based on the existence of the patio in the middle of the yard along with a large tree and the problem with the screened porch in the front, the garage could not be adequately shifted to the left.
4. The development conditions minimize the impact of the variance on the adjacent property that is located to the right of the subject parcel.
5. The applicant takes very good care of her lot and the property will continue to be well maintained.
6. The irregular shape of the lot facilitates the need for the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;



- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an accessory structure (detached garage) as shown on the plat prepared by William G. Hawes, dated March 22, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage shall be architecturally compatible with 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. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this variance.

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Ordinance to permit construction of addition 19.7 ft. from rear lot line and 7.9 ft. and 8.5 ft. from side lot lines. Located at 2901 Preston Ave. on approx. 6,250 sq. ft. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 93-1 ((18)) (F) 209. (Concurrent with SP 2002-MV-021).

9:00 A.M. SERGIO GUTIERREZ, SP 2002-MV-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit dwelling to remain 7.9 ft. and 8.5 ft. from side lot lines. Located at 2901 Preston Ave. on approx. 6,250 sq. ft. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 93-1 ((18)) (F) 209. (Concurrent with VC 2002-MV-047).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sergio Gutierrez, 2901 Preston Avenue, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirement to permit a dwelling to remain 7.9 feet from a side lot line and 8.5 feet from the other side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 4.1 feet from one side lot line and 3.5 feet from the other side lot line were requested. The applicant also requested variances to construct a two-story addition at the rear of the existing dwelling to be located 19.7 feet from the rear lot line. The proposed addition would also extend 7.9 feet from one side lot line and 8.5 feet from the other side lot line. The Zoning Ordinance permits a minimum side yard of 12 feet and a minimum rear yard of 25 feet; therefore, variances of 5.3 for the rear yard, 4.1 feet from one side lot line and 8.5 feet from the other side lot line were requested.

Mr. Guterrez presented the requests as outlined in the statements of justification submitted with the applications. He stated that he bought the house in 1999. He explained that the addition was needed to provide additional living space for his family.

Mr. Pammel asked if the error in building location existed when he purchased the property. Mr. Guterrez replied that was correct.

Mr. Hart asked staff when the home was built. Mr. Bernal replied 1957. Mr. Hart asked if the building permit reflected a different type of addition than what was built. Mr. Bernal stated that the building permit for the addition adequately reflected what was built but there was a previous building permit issued to enclose a carport and there were variations between that building permit and what was constructed.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 2002-MV-047 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SERGIO GUTIERREZ, VC 2002-MV-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from rear lot line and 7.9 ft. and 8.5 ft. from side lot lines. Located at 2901 Preston Ave. on approx. 6,250 sq. ft. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 93-1 ((18)) (F) 209. (Concurrent with SP 2002-MV-021). 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 18, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant's testimony and statement of justification indicated compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This Variance is approved for the location of a two-story addition as shown on the plat prepared by Charles E. Janson, dated March 5, 1990, as revised through February 26, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant addition time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent

from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley moved to approve SP 2002-MV-021 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SERGIO GUTIERREZ, SP 2002-MV-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit dwelling to remain 7.9 ft. and 8.5 ft. from side lot lines. Located at 2901 Preston Ave. on approx. 6,250 sq. ft. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 93-1 ((18)) (F) 209. (Concurrent with VC 2002-MV-047). 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 18, 2002; 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 as shown on the plat prepared by Charles E. Janson, dated March 5, 1990, as revised through February 26, 2002, 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 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 509 June 18, 2002, (Tape 1), Scheduled case of:

9:30 A.M. BX AUTO CENTER, LLC, A 2001-MA-036, A 2001-MA-037, A 2001-MA-038, A 2001-MA-039, A 2001-MA-040 Appls. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing tenants to operate Vehicle Light and/or Major Service Establishments without Special Exception approval and without valid Non-Residential Use Permits, as well as junk yards/storage yards, all in violation of Zoning Ordinance provisions. Located at 5723-C, 5723-D, 5723-E and 5723-F Center La. on approx. 44,544 sq. ft. of land zoned C-8, SC, HC and CRD. Mason District. Tax Map 61-2 ((20)) 10. (Admin. moved from 2/5/02) (Def from 4/16/02)

Mr. Hart made a disclosure that would not affect his participation in the hearing.

Margaret Stehman, Staff Coordinator, Ordinance Administration Branch, presented staff's position as contained in the staff report. She explained that there was a request for deferral and staff had submitted a memorandum to the Board outlining several significant steps that the appellant had taken to bring the property into compliance. She said staff would support a 45-day deferral.

Marc Busman, agent for appellant, explained that two tenants had refused to vacate the property and the appellant had instigated unlawful detainer suits against them. He informed the Board that the appellant had placed two ads in the Washington Post real estate section and there had been several leads but no new tenants had been secured. Mr. Busman stated that the appellant had gone to great lengths to address the concerns of the neighbors by beginning the eviction process for two of the most offensive businesses and by cleaning up the property. He informed the Board that he had spoken with one neighbor regarding maintenance of a fence between the two properties and he assured that proper maintenance would be undertaken. He requested a deferral to give the appellant more time to terminate the remaining leases on the property, evict the two tenants that refused to vacate and secure tenants with approved uses for the district. He explained that the appellant could not afford to have the space vacant so the current tenants moving out needed to correspond with the new tenants moving in.

Ms. Stehman submitted photographs illustrating that the appellant had cleaned up the property.

Chairman DiGiulian called for speakers to the issue of deferral.

Anne Shoemaker, no address given for record, came forward to speak to the issue of deferral. She stated that her property backed up to Total Auto Repair. She said that she and her husband had lived at the property for 10 years. She stated that although the appellant had taken steps to come into compliance, she hadn't seen any efforts taken to maintain the fence between the two properties and noise from the property still took place at all hours of the day and night. She urged the Board to ensure that all of the businesses

Page 510, June 18, 2002, (Tape 1), BX AUTO CENTER, LLC, A 2001-MA-036, A 2001-MA-037, A 2001-MA-038, A 2001-MA-039, A 2001-MA-040, continued from Page 509

that were in violation would be terminated. She asked the Board if the owner or the tenant was responsible for the maintenance of the fence between the two properties.

Ms. Stehman replied that the owner was responsible for the maintenance of the fence. She stated that the fence was not a part of the Notice of Violation. She stated that the fence was a part of an old variance and she would have to perform additional research regarding that issue.

Mr. Hart asked to have the information regarding the old variance for the property.

Mr. Busman stated that the appellant was aware of his responsibility for the fence and he was willing to perform all maintenance needed. He stated that the landlord was not the appropriate person to hold responsible for the level of noise generated by the tenants. He suggested that the neighbors contact the police regarding any noise issues.

Mr. Pammel stated that he would not support any additional deferrals because action needed to be taken with respect to the appeals.

Mr. Pammel moved to defer A 2002-MA-036 through 040 to August 6, 2002, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting, and Mr. Kelley was not present for the vote.

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Page 510, June 18, 2002, (Tape 1), After Agenda Items:

Additional Time Request  
Efthalia T. Triarhos and Jack Wuerker, VC 99-P-119

Mr. Pammel moved to approve the additional time request. The new expiration date is June 8, 2004. Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting. Mr. Kelley was not present for the vote.

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Page 510, June 18, 2002, (Tape 1), After Agenda Items:

Additional Time Request  
Church of Jesus Christ of Latter Day Saints, SP 99-L-042

Mr. Pammel moved to approve the additional time request. The new expiration date is June 8, 2004. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting. Mr. Kelley was not present for the vote.

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Page 510, June 18, 2002, (Tape 1), After Agenda Items:

Deferral Request  
Hunter Dowdy Trustees, A 2002-MV-014

Mr. Hart made a disclosure that would not affect his ability to participate in the hearing.

Dexter Odin, Agent for appellants, explained that Mr. Hunter had reserved a vacation house during the July 2, 2002 hearing date and requested a deferral. He stated that the deferral request was not a ploy to assist the tenant in avoiding enforcement of the Zoning Ordinance.

William E. Shoup, Deputy Zoning Administrator, stated that staff strongly opposed the deferral request. He presented information to the Board regarding the frequency of appeals related to the subject property. He said that the violation was of a very blatant nature and suggested that a deferral was not in order. He stated

Page 511, June 18, 2002, (Tape 1), After Agenda Items, continued from Page 510

that the appellant was well represented by council and requested that the Board go forward with the appeal on July 2, 2002.

Mr. Ribble moved to defer A 2002-MV-012 until July 23, 2002, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting. Mr. Kelley was not present for the vote.

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Page 511, June 18, 2002, (Tape 1), After Agenda Items:

Approval of June 11, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Hammack were absent from the meeting. 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 10:50 a.m.

Minutes by: Lori M. Mallam

Approved on: October 1, 2002



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 25, 2002. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Nancy Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 513, June 25, 2002, (Tape 1), Scheduled case of:

9:00 A.M. COLE J. & JENNIFER A. KUPEC, VC 2002-DR-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.2 ft. from front lot line of a corner lot. Located at 6438 Noble Dr. on approx. 15,123 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((17)) 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. Cole Kupec, 6438 Noble 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 the construction of an addition 20.2 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 9.8 feet was requested.

Mr. Hart asked if there was anything in the Ordinance with regard to sight distance on a corner lot. Susan Langdon, Chief, Special Permit and Variance Branch, replied not with regard to an addition.

Mr. Kupec presented the variance request as outlined in the statement of justification submitted with the application. He said the lot suffered from sloped topography. Mr. Kupec stated that there was no other location for the addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-DR-055 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COLE J. & JENNIFER A. KUPEC, VC 2002-DR-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.2 ft. from front lot line of a corner lot. Located at 6438 Noble Dr. on approx. 15,123 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((17)) 18. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants satisfied the required standards for a variance.
3. There is an existing driveway on the lot.
4. The topographical conditions preclude the garage from being located in any other area on the lot.
5. The lot suffers from double front yard requirements.
6. The addition will be set back from the street.
7. The variance request will not change the character of the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition as shown on the plat prepared by L. S. Whitson dated, April 2, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 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 3, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 515, June 25, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JANE W. HARDING, VC 2002-PR-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line of a corner lot and 16.0 ft. from side lot line. Located at 8350 Idylwood Rd. on approx. 9,050 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (A) 44, 45 and 46.

9:00 A.M. JANE W. HARDING, VC 2002-PR-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line of a corner lot and 16.0 ft. from side lot line. Located at 8353 First Ave. on approx. 6,000 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (A) 21, 22 and 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. Lori Greenlief, Agent, 14368 Nandina 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 prepared by Juan Bernal. One of the proposed single family dwellings is to be located on a 6,000 square foot lot which contained Parcels 21, 22, and 23. Ms. Langdon stated that the subject vacant properties were located in the Providence District .

Mr. Pammel stated that a variance was also required for a rear yard for Lots 21, 22, and 23, because there was only a 20 foot rear yard.

Ms. Greenlief stated that on a corner lot, the rear yard could take a side yard dimension, so the side yard in the District is 20 feet.

Ms. Langdon noted that was correct. She continued with the presentation, stating that the applicant requested variances to permit the construction of dwellings to be located 20.0 feet from the front lot lines of a corner lot and 16.0 feet from the side lot lines. The front yard and side yard requirement are 40 feet and 20 feet respectively. Therefore, variances of 20.0 feet for front yard and 4.0 feet for the side yard were requested

Ms. Greenlief, the applicant's agent, presented the variance requests as outlined in the statement of justification submitted with the application. She said the subject properties were first platted in 1905 as railroad car lots. Ms. Greenlief stated that the properties were acquired in good faith, were extremely narrow, and were corner lots. She said there were a variety of development methods used in the neighborhood. Ms. Greenlief said the request would cause no detrimental effect to the neighborhood.

Mr. Hart asked which way the houses would be oriented and asked if there would be a deck or an outdoor attachment. Ms. Greenlief responded that the houses would front Idylwood Road and First Avenue. She said she did not know if decks were planned for the properties.

Chairman DiGiulian called for speakers.

Margaret Snyder, 8355 First Avenue, came forward to speak in opposition. She said she thought nothing could be built on the properties. Ms. Snyder stated that the request would impinge upon her sunlight and her privacy. She said it was important to maintain the character and integrity of the neighborhood. Ms. Snyder stated that the house would be detrimental to property values. She said she had concerns relating to water pressure, roads, and the visibility.

Rita O'Connor, 8334 Idylwood Road, came forward to speak in opposition. She submitted a petition signed by neighbors in opposition. Ms. O'Connor expressed concerns relating to the houses being 20 feet from the road, preservation of trees, and drainage problems.

Bernard Stotler, 2339 Central Avenue, came forward to speak in opposition. He expressed concerns because the residents maintained their own roads.

Mr. Pammel asked why the State did not maintain the roads. Ms. Langdon replied that she did not know, but could research that information.

Page 516, June 25, 2002, (Tape 1), JANE W. HARDING, VC 2002-PR-061 and JANE W. HARDING, VC 2002-PR-062, continued from Page 515

Ms. Greenleaf stated that the owners refused to dedicate right of way in 1978, so the Virginia Department of Transportation (VDOT) terminated the project.

Mr. Pammel stated that VDOT needed to maintain roads under the Byrd Act. He said he wanted staff or the County Executive to pursue that issue.

Ms. Greenleaf stated in her rebuttal that the character and the style of the home would be compatible with the neighborhood. She said the existing trees would not be denuded and the trees were higher than the proposed house. Ms. Greenleaf stated that drainage issues would be addressed through a grading plan.

Mr. Hart asked if there was information from VDOT about potential widening of the road. Ms. Langdon replied that typically information was not received from VDOT with regard to variance applications.

Mr. Hart stated that he would like comments from VDOT. He said there should be a notation in the conditions with regard to the height of the house.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the issue before the BZA was not whether they could build on the lot, but if they could build 20 feet from the lot line. He said the owner had rights to build on their property, but the issue was what was the best form of development.

Mr. Hammack stated that the BZA did not have the authority to deal with some of the issues mentioned by the speakers.

Mr. Pammel moved to approve VC 2002-PR-061 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JANE W. HARDING, VC 2002-PR-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line of a corner lot and 16.0 ft. from side lot line. Located at 8350 Idylwood Rd. on approx. 9,050 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (A) 44, 45 and 46. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 2002; 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 prescribed criteria for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;

- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling as shown on the plat prepared by Harold L. Logan, dated, March 21, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The building height for the residential structure shall not exceed 2½ stories as measured from the average grade.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 2002. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel moved to approve VC 2002-PR-062 for the reasons noted in the Resolution

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JANE W. HARDING, VC 2002-PR-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line of a corner lot and 16.0 ft. from side lot line. Located at 8353 First Ave. on approx. 6,000 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (A) 21, 22 and 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 June 25, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling as shown on the plat prepared by Harold L. Logan, dated, March 21, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

be obtained.

3. The building height for the residential structure shall not exceed 2½ stories as measured from the average grade.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 519, June 25, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LYMAN S. & DEE A. BUTTERFIELD, SP 2002-PR-023 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 7.0 ft. from side lot line and 1.9 ft. from rear lot line. Located at 8111 Bright Meadow La. on approx. 12,165 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((18)) 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. Lyman Butterfield, 8111 Bright Meadow Lane, Dunn Loring, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to minimum yard requirements based on an error in building location to permit an accessory structure to remain 7.0 feet from the side lot line and 1.9 feet from the rear lot line. A minimum side yard of 12 feet is required and a minimum rear yard of 10.8 feet is required; therefore, variances of 5 feet and 8.9 feet were requested respectively.

Mr. Butterfield presented the request as outlined in the statement of justification submitted with the application. He said he rebuilt an existing structure and changed the pitch of the roof. Mr. Butterfield stated that the shed was not in the line of sight. He asked that the shed be able to remain.

Mr. Hammack asked what was on the adjacent property. Mr. Butterfield replied that the adjacent lot was vacant.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-PR-023 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LYMAN S. & DEE A. BUTTERFIELD, SP 2002-PR-023 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 7.0 ft. from side lot line and 1.9 ft. from rear lot line. Located at 8111 Bright Meadow La. on approx. 12,165 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((18)) 10. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 2002; 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 (shed) as shown on the plat prepared by George M. O'Quinn, Land Surveyor, dated January 31, 2002, as revised through April 19, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained and approval of final inspection shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 2002. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. PAUL AND DRAYANNE ERICKSON, VC 2002-HM-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. and eave 1.0 ft. from side lot line such that side yards total 8.0 ft. Located at 9435 Talisman Dr. on approx. 33,580 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 38-1 ((34)) 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. Paul and Drayanne Erickson, 9435 Talisman Drive Vienna, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 3.0 feet and an eave 1.0 foot from the side lot line such that side yards total 8.0 feet. A minimum side yard of 20 feet is required; therefore, variances of 5.0 feet and 4.0 feet, with a total side yard of 12.0 feet, were requested.

Mr. Erickson presented the variance request as outlined in the statement of justification submitted with the application. He said the variance was requested to provide expanded living spaces for his family. Mr. Erickson said the lot was unusually shaped. He said there was no other location for the addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 2002-HM-065 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL AND DRAYANNE ERICKSON, VC 2002-HM-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. and eave 1.0 ft. from side lot line such that side yards total 8.0 ft. Located at 9435 Talisman Dr. on approx. 33,580 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 38-1 ((34)) 15. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants' statement of justification indicated compliance with the required standards for a variance.
3. The lot has an exceptional shape.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and eave shown on the plat prepared by Paul R. Erickson, dated March 1, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 522, June 25, 2002, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD JOSEPH, VC 2002-MV-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line. Located at 1216 Priscilla La. on approx. 10,519 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (19) 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. Richard Joseph, 1216 Priscilla Lane, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 10.3 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 1.7 feet was requested.

Mr. Joseph presented the variance request as outlined in the statement of justification submitted with the application. He said the variance request was to enclose an existing screen porch.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MV-066 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD JOSEPH, VC 2002-MV-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line. Located at 1216 Priscilla La. on approx. 10,519 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (19) 20. 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 25, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot is narrow.
4. The applicant is enclosing an existing screen porch with glass.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 International, LLC, dated March 15, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 524, June 25, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL & SANDRA L. MCMASTER, VC 2002-MV-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.5 ft. from front lot line of a corner lot. Located at 7701 Frances Dr. on approx. 22,848 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (8) 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. Duane McMaster, 6523 Beverly Avenue, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 26.5 from the front lot line of a corner lot. A minimum front yard of 35 feet is required; therefore, a variance of 8.5 feet was requested.

Mr. McMaster presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to expand the applicants' home.

There were no speakers and Chairman DiGiulian closed the public hearing

Mr. Ribble moved to approve VC 2002-MV-056 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

DANIEL & SANDRA L. MCMASTER, VC 2002-MV-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.5 ft. from front lot line of a corner lot. Located at 7701 Frances Dr. on approx. 22,848 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (8) 505. 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 25, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The applicants suffer from double front yards on a corner lot.
4. The variance request is minimal because only one corner of the addition 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 the two and a half (2½) story addition shown on the plat prepared by Gerald M. Procanick, dated March 30, 2002, as revised through April 7, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. 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 3, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 526 June 25, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LUU T. NGUYEN, SP 2002-BR-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.7 ft. from side lot line. Located at 5503 Gardner Pl. on approx. 19,926 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (17) 8. (def. From 6/4/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Luu Nguyen, 5503 Gardner Place, Burke, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. At the June 4, 2002, public hearing the BZA voted to defer decision on the subject application for the applicant and staff to provide the following information: Documentation of the date the property was inherited or conveyed to the current owner(s); documentation of whether any electrical or plumbing connections had been installed in the garage; the name of the contractor who enclosed the room; confirmation of the date the room was actually enclosed; and, copies of all building permits and associated paperwork. She said the applicant supplied several copies of deeds to staff. However, the deed, which showed conveyance from the applicant's uncle to the applicant's mother, was not included in the addendum because it was not found in the County records. Ms. Josiah stated that staff accompanied the Zoning Enforcement Officer to the site on Monday, June 17, 2002, and could verify that there were no electrical or plumbing connections in the enclosed carport. She said the construction of the carport consisted of posts supporting the roof with vinyl siding-covered plywood comprising the sides of the structure. Ms. Josiah said the applicant had not provided the name of the contractor who enclosed the carport or confirmed the date that the room was actually enclosed. She said all building permits for the property had been included as an attachment to the addendum.

Mr. Hart asked if staff knew whether the carport was built in the wrong place or whether something was added. Ms. Josiah stated that staff did not know.

Mr. Nguyen presented the request as outlined in the statement of justification submitted with the application. He said the carport was enclosed on one side and had been there since 1980. He said they purchased the property in 1992. Mr. Nguyen said the enclosure was used for storage because the house had no basement.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2002-BR-016 for the reasons noted in the Resolution

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

LUU T. NGUYEN, SP 2002-BR-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.7 ft. from side lot line. Located at 5503 Gardner Pl. on approx. 19,926 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (17) 8. (def. From 6/4/02) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 25, 2002; 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 Alexandria Surveys International, LLC, dated December 6, 2001, as revised through February 19, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion, which carried by a vote of 6-0. 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 3, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 528 June 25, 2002, (Tape 1), Scheduled case of:

9:30 A.M. HELEN M. SHIROMA, A 2001-MA-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property was not legally subdivided and, therefore, no Building Permit can be issued for the erection of any building or structure on the lot, in accordance with Par. 1 of Sect. 18-603 of the Zoning Ordinance. Located at 4921 Virginia St. on approx. 3.08 ac. of land zoned R-2. Mason District. Tax Map 72-3 ((13)) 5. (Deferred from 2/19/02)

John Bell, Zoning Administration Division, stated that the appeal had been deferred from February 19, 2002, and an update on the appeal had been distributed to the BZA. Mr. Bell stated that staff was asked by the BZA to review issues related to the title search, roads abutting the property, and Subdivision Ordinance issues. He said at the completion of the February 19, 2002, hearing, a property owner from one of the adjacent lots presented staff with a 1942 deed for the property, which was recorded in the land records in 1945. Mr. Bell said there were no deeds found that predated that deed. He said the County Attorney reviewed the issue about the roads, and it appeared that Virginia Street appeared on the General Highway Map for the Virginia Department of Transportation (VDOT) dated July 1, 1995, and it depicted Virginia Street as being a secondary highway or right of way. As such, the appellant's property would have lawful access to public right of way. Mr. Bell said with regard to the subdivision issue, very little had change with regard to staff's opinion after reviewing it with staff from the Department of Public Works and Environmental Services (DPWES). He said staff found that the provisions of the 1929 Subdivision Ordinance would have applied to the subject property and because they could not find a plat for that subdivision and there were no deeds noting that subdivision, it would still be considered an illegal subdivision of the property. Mr. Bell said the County Attorney's Office stated that a resubdivision of the property could occur for Lot 5 on its own because there were no specific provisions within the current Subdivision Ordinance which would preclude that. He said John Friedman from DPWES and John Foster from the County Attorney's Office was present to answer questions from the BZA.

Mr. Hart asked why the appellant could not record a plat that purported to subdivide Lot 5 into a lot size just a little smaller and dedicate a portion of the road to make the street wider.

John Friedman, DPWES, stated that in order to comply with the requirements of the Subdivision Ordinance, in addition to the dedication, subdivision would require that various public improvements be provided. He said when you dedicate right of way, in any resubdivision of Lot 5, it was likely to require improvements to be made to the road.

Mr. Hart inquired about the doughnut hole theory and asked if the whole doughnut was approved why was the hole in the doughnut not a valid piece of the property. Mr. Bell said with regard to what happened in 1925, there were no subdivision provisions in effect at that time. He said 1929, as staff understood, was the first year there was any sort of subdivision provisions with the County. Mr. Bell said anything subsequent to that would have been subject to those requirements and required the filing of a plat, that had to be approved by 1929 through 1935 by the County Engineer and be recorded and approved in the land records. He said staff's basis was that what created all of the original lots from the resubdivision did not appear to be legal. He said staff could not find any record of that plat and no record that it was ever recorded. Mr. Bell said the lots were sold piecemeal based on a description from the County Surveyor at the time and that was what created the lots. He said the issue of legitimizing the lots by the subsequent subdivisions that occurred, would be a question that was more appropriate for Mr. Friedman to answer, but he did not believe that Mr. Friedman agreed that would be a way to legitimize the lot.



John McBride, Agent for the appellant, introduced Sara Kroll, Land Planner. Mr. McBride stated that 6.6 acres of a 9.7-acre parent tract had been used for well over 20 years as a public street. Virginia Street was extended and 11 single family homes constructed. He said approximately 3 acres of that 6.6 had been resubdivided as approved by the County who had signed the deeds and plats. He said dedications were made for Virginia Street in those subdivisions, one in 1979 and one in 1981. Mr. McBride said that currently County staff refused to allow any reasonable use of what was shown as Parcel 5. He said the appellants asked the Board to make 3 determinations. The first was that Virginia Street was a public road to 740 feet south of its intersection with 7<sup>th</sup> Street. He said staff agreed with that and the appellant requested that the Board make that determination. Mr. McBride said the second determination was that the property was eligible for resubdivision. He said like the subdivisions in 1979 and 1981, Parcel 5 should also be eligible to be resubdivided in a manner which met Zoning Ordinance requirements. He said staff agreed with that determination. He said the third determination would be for the BZA to determine that Parcel 5 was subdivided and therefore, is eligible for a building permit. Mr. McBride said in 1979 and 1981, there were two resubdivisions of the parent tract. He said it was the appellant's position that whenever you subdivide a portion of the parent tract, you were subdividing all of the parent tract.

Mr. Hart asked how did Lots 94A and 94B get approved. Ms. Kroll replied that they were filed under a preliminary plan that was approved by the County in 1979. She said variances were also approved for those lots by the BZA for final house locations.

Chairman DiGiulian called for speakers.

Gail Robertson, 6458 8<sup>th</sup> Street, came forward stating that she objected to the property being built upon. Ms. Robertson asked that there be further opportunity for the neighbors to provide public input for what was built and to address environmental issues if the determination was made that the lot was buildable and could be subdivided.

Mr. Hart said the BZA did not decide those types of issues. He said that was up to the Board of Supervisors. Mr. Hart said the lot was large enough under the current zoning for as many as six houses. He said the determination of whether something in the future required a public hearing or not was an issue the Board of Supervisors would control in the Ordinance and not the BZA. Mr. Hart said the only issue before the BZA was whether one lot could obtain a building permit.

Chairman DiGiulian asked why Lot 5 could be subdivided but could not obtain a building permit for a single house. Mr. Bell stated that staff's understanding from the County Attorney's Office was that the reason they could subdivide was that there were no provisions in the current Subdivision Ordinance which precluded them from subdividing even under the existing conditions which staff found to be an unbuildable lot.

Chairman DiGiulian asked if it was an illegal lot, how could it be subdivided. John Foster, County Attorney's Office, replied that there was no expressed restriction under the current Ordinance that would preclude the appellant from filing an application to resubdivide the property. He said there was no expressed provision that established a prerequisite that before you were eligible for subdivision of property, you have to have a legal lot. Mr. Foster said there were expressed provisions in the Ordinance that addressed lots being created by metes and bounds description.

Mr. McBride stated, in his rebuttal, that the assessments on the property were for a buildable lot. He said the definition of lot did not require that it be a recorded lot of record. Mr. McBride said there was nothing in any County Ordinance that precluded the County from issuing a building permit for the lot.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said this was a unique application. He said he was concerned about the opinion that was presented that this was not a buildable lot because it was illegally created, yet on the other hand, the same opinion concluded that you could bring the lot into conformance through a resubdivision. Mr. Pammel said he was curious as to how someone could resubdivide a parcel of land that staff said was never legally created in the first place. He asked if the BZA accepted the position of the Zoning Administrator, would that be confiscation and deprive the property owner the right to put a single house on that property. Mr. Pammel said the issue was whether this was a legal parcel of land that permitted the owner of the property to erect one single family dwelling on the property. He said here was a parcel of land that was assessed by the County, and there were two prior recorded resubdivisions of the same parcels. Mr. Pammel said Mr.

McBride made an excellent point that in neither instance was there an appeal. He said therefore, by law, they stood as resubdivisions of the parent parcels. Mr. Pammel said the subject parcel was lawful as a result of being previously part of a resubdivision. He said the appellant made excellent points. He stated that Virginia Street was a paved street that met VDOT standards.

Mr. Pammel moved to reverse the determination of the Zoning Administrator. Mr. Pammel moved that the BZA find that Virginia Street was a public road for a distance of 740 feet, south of 7<sup>th</sup> Street; that the property was eligible for resubdivision; that Parcel 5 was subdivided or at least was a parcel involved in the subdivision of two previous cases, one in 1979 which involved Parcels 94A and 94B and again in 1981 which involved Parcels 6A, 7C, 7D, and 7E, all part of the parent parcel; and, that Parcel 5 was eligible for the issuance of a building permit and recognized as a buildable parcel.

Mr. Kelley seconded the motion.

Mr. Hammack stated that he supported the motion with respect to the third issue that the property was eligible for a building permit. He said he would prefer if the BZA did not have to make findings of fact on the other two issues which might be moot or not issues before the BZA.

Mr. Hart said he agreed with Mr. Hammack. He stated that there was a lot of overlap and inconsistencies in the documents. Mr. Hart said there was nothing showing that the road was ever dedicated, and nothing showing that it was ever condemned. He said for the purpose and the function of the BZA, what was appealed was the determination of the Zoning Administrator about whether Lot 5 could have a building permit. Mr. Hart said it had nothing to do with public streets. He said the most troublesome issue before the BZA was whether Lot 5 was eligible for resubdivision. He said looking at the issue that was appealed, as he understood, the Zoning Administrator did not rule that the property was not eligible for resubdivision. Mr. Hart said he agreed with Mr. McBride's analysis and his observations about the appeal, but said he did not understand how the lot got to be a buildable lot just because it was leftover. Mr. Hart said he was troubled by the inconsistencies and this was a very unusual situation, but he would agree with Mr. Foster's analysis. He said he was not persuaded that Lot 5, as platted out, was a buildable lot. Mr. Hart said even though he agreed with Mr. McBride on most of the issues, the first two parts of the motion were extraneous and he could not agree on the third, so he voted against the motion.

The motion carried by a vote 5-1 with Mr. Hart voting against the motion. Ms. Gibb was absent from the meeting. The Zoning Administrator's determination was overruled.

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Page 530 June 25, 2002, (Tape 1), Scheduled case of:

9:30 A.M. A.W. RUDZINSKI AND CHARLOTTE JONES, A 2002-SU-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property was not legally subdivided and, therefore, no Building Permit can be issued for the erection of any building or structure on the lot, in accordance with Par. 1 of Sect. 18-603 of the Zoning Ordinance. Located at 15400 Lee Hwy. on approx. 2.22 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((3)) 1. (Admin moved from 5/14/02)

Chairman DiGiulian noted that A 2002-SU-003 was administratively moved to July 9, 2002.

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Page 530 June 25, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Apostolic Church of Washington, Inc. SP 91-Y-036

Mr. Ribble moved to defer the Additional Time Request to July 2, 2002. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Request for Intent to Defer  
WAL-MART Stores East, Inc. - A 2002-LE-009

William Shoup, Deputy Zoning Administrator, stated that staff was frustrated with this case. He said the appeal dealt with a Notice of Violation that Wal-Mart at Kingstowne was using cargo containers as storage units on their property. Mr. Shoup said there was no evidence presented that the notices had been sent. He said staff was told that they were and had asked that the appellant's documentation be submitted as required but it had not been submitted. Mr. Shoup said staff believed the notices were not sent for the appeal. He said staff received a deferral request less than 2 weeks before the hearing, citing a conflict that the appellant was aware of in March, 2002, prior to filing the appeal application. Mr. Shoup said staff had left voice mail messages that they would present the deferral request to the Board on June 25, 2002, in order to give the appellant's attorneys an opportunity to appear before the BZA to explain the reason they did not send the notices and to respond to any questions regarding the deferral request. He said to his knowledge, staff never received a response, but there appeared to be someone present to represent the appellant. Mr. Shoup said given the circumstances and the lack of responsiveness, staff would object to a deferral. He said staff felt this was a blatant violation. Mr. Shoup submitted photographs of the property. He requested that the BZA dismiss the appeal given the lack of responsiveness and the nature of the violation. Mr. Shoup said citizens were very concerned about the violation and further delays would frustrate the situation. He said there was a citizen representative present to speak to the deferral request.

Mr. Kelley moved that the BZA not grant the deferral request. He said he did not think the BZA could dismiss until the date of the scheduled public hearing. Mr. Kelley said he did not think the appellant was operating in a forthright manner with the County.

Elizabeth Fisher, agent for the appellant, came forward stating that in terms of the responsive aspect, she had spoken with Mr. Reale several times last week. She said she was on vacation and came back early from vacation to appear before the BZA. Ms. Fisher said she had spoken with the individual who had sent the notices and she was told that the notices were sent. She said she was given the names of the individuals to which notices were sent, as well as the numbers of the certified receipts. Ms. Fisher said they had modified site plans and engineering plans that they wanted to put before the individuals affected. She said they were not nonresponsive, and in terms of the date, she was not originally the person responsible for handling the matter. Ms. Fisher said they were putting together a modified site plan with regard to the containers at issue. She said she had spoken with the County Attorney's office informing them that they intended to have the modified site plan ready by July 2, 2002.

Chairman DiGiulian asked if the notices had been sent. Ms. Fisher replied yes. Chairman DiGiulian stated that there should be no problem proceeding with the hearing on July 2, 2002. Ms. Fisher said she was unable to attend the hearing that day.

Mr. Hammack asked whether the original attorney could attend the hearing. Ms. Fisher said he was unavailable. Mr. Hammack asked why. Ms. Fisher replied that he would be in court.

Chairman DiGiulian stated that the appellants had hired a big law firm and he would think that someone would be able to make the hearing.

Mr. Hart said he would like to understand whether all the right notices went to the right people, what the cut off for the notices was, and whether the request for the deferral came before or after the notice deadline.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Clerk indicated that there were not in order at this point and that staff did not have the information needed to check the notices to make sure they were in order.

Mr. Shoup said the request for deferral came on June 21<sup>st</sup> and the notice deadline was June 17<sup>th</sup>.

Chairman DiGiulian called for speakers to the deferral issue.

Kathleen Snider, President, Kingstowne Homeowners Association, came forward and requested that the BZA not grant a deferral.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. The deferral request was denied. //

Page 532, June 25, 2002, (Tape 1), After Agenda Item:

Request for Intent to Defer,  
Dar Al-Hijrah Islamic Center.  
SPA 84-M-009-2 and VC 01-M-008,

Mr. Ribble moved to approve the Request for Intent to Defer. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The applications were deferred to December 12, 2002, at 9:30 a.m.

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Page 532 June 25, 2002, (Tape 1), After Agenda Item:

Approval of June 18, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hart seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from 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 11:38 a.m.

Minutes by: Regina Thorn Corbett

Approved on: January 7, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 2, 2002. The following Board Members were present: Chairman DiGiulian, John Ribble, Nancy Gibb, Robert Kelley, Paul Hammack, Jim Hart, and James Pammel.

Chairman DiGiulian called the meeting to order at 9:00 a.m. and discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian stated that he would go to Item 3 on the After Agenda before the regularly scheduled cases.

Page 533, July 2, 2002, (Tape 1), After Agenda Item:

Request for Additional Time  
Apostolic Church of Washington, Inc., SP 91-Y-036

Chairman DiGiulian stated that there was a request for 12 (twelve) months additional time and staff had recommended denial.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that a representative for the church was present to speak to the request.

Mark Mittereder, Agent, stated that the church was at the point of site plan approval. He said the church had bonded all their bonds and agreements and paid all their fees over the past few months. He said the church had secured financing through Millennium Bank for the full amount of the project. He said the church had recorded their record plat and had diligently pursued all the outstanding item conditions on the site plan.

Mr. Mittereder explained that the adjoining property owner had agreed to work with them on several easement issues and that the plat had been drafted and submitted. He said all the legal documents had been drafted and submitted to the adjoining property owners and they were waiting for final approval. He said once that was complete, he believed the site plan would be approved and the church would be ready to start immediately.

Chairman DiGiulian asked what was the minimum time extension that would be required, and Mr. Mittereder replied that a short duration of one to three months would be acceptable.

Ms. Gibb moved to approve three months of additional time. Mr. Ribble seconded the motion, which carried by a 7-0 vote.

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Page 538 July 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ANTHONY R. LEWIS, VC 2002-SU-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in front yard of a corner lot. Located at 6706 Folkers Landing on approx. 9,607 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 65-1 ((13)) (5) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Anthony Lewis, 6606 Folkers Landing, Centreville, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant sought a variance to permit an existing 6 foot high fence to remain in the front yard of a corner lot. She said the Ordinance allowed a maximum fence height of 4 feet in the front yard; therefore, a variance of 2 feet was requested.

Mr. Lewis presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had moved into the home in 1998 and had wanted to build a fence at that time. He said there had not been a Home Owners Association at that time and he was told to talk to the builder, Edgemoor, to get approval. He said he felt that he had been misled by the builder, as he was led to believe that Edgemoor had the final authority for approval.

Mr. Lewis stated that he asked the builder if he needed to go through the County and was told no, and that all he needed to do was to submit his sketches and make a request to the builder, which he did. He said he received in writing a letter in return for the approval. Mr. Lewis said his fence was in character with the other fences in the area.

Mr. Hammack examined a photograph of the fence and clarified the height with Ms. Josiah. He asked if there was a complaint regarding the fence. Mr. Lewis replied that he had received a Notice in the mail from the County. He said apparently someone had reported him and a neighbor across the street who also had a corner lot.

Mr. Hammack moved to approve VC 2002-SU-064 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY R. LEWIS, VC 2002-SU-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.0 ft. in height to remain in front yard of a corner lot. Located at 6706 Folkers Landing on approx. 9,607 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-1 ((13)) (5) 6. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot suffers from having double front yard requirements.
4. The fence is in the front yard by definition, but functionally is in the side and rear yards.
5. The fence does not restrict sight at the intersection.
6. The maximum height of the fence is 6 feet and curves down to points below that, so the maximum variance is 2.0 feet.
7. The topography of the backyard is exceptional in that it slopes away from the house.
8. The fence does not change the character of the zoning district.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the fence shown on the plat prepared by Steven M. Schwartz, dated April 2, 2002, as signed on April 16, 2002, 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.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 535, July 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MARTIN G. OLSON, VC 2002-SP-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from rear lot line. Located at 6302 Bluestone Pl. on approx. 10,459 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 66-3 ((9)) 518.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Martin G. Olson, 6302 Bluestone Place, Clifton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of screened porch addition to be located 15.1 feet from the rear lot line. He said the minimum yard requirement was 25 feet; therefore, a variance of 9.9 feet was requested.

Mr. Olson presented the variance request as outlined in the statement of justification submitted with the application. He stated that he and his wife were the original owners of the house. He said the original deck was built some years ago and they had been unable to use it because of his wife's sensitivity to insect bites.

Mr. Olson stated that they wanted to enclose 20 feet of their deck to provide an insect free environment for their use. He said he had gone to the Home Owners Association (HOA) Architecture Review Board and had gotten their approval for the application. He presented to the Board signed letters of support from his neighbors.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-SP-067 for the reasons noted in the Resolutions.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARTIN G. OLSON, VC 2002-SP-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from rear lot line. Located at 6302 Bluestone Pl. on approx. 10,459 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 66-3 ((9)) 518. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot has several unique characteristics.
3. The lot is exceptionally shallow.
4. The lot has an unusual configuration in that there is a narrow frontage and the lot lines extend outward from that point to a wide dimension at the rear of the property line, approximately 100 feet.
5. The topography of the land is exceptional in that it slopes downward from the street to the rear of the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.



AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by Larry N. Scartz, dated March 14, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 537, July 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JAY R. SULLIVAN, VC 2002-MV-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.9 ft., 8.8 ft. and 5.1 ft. from side lot lines and permit addition to remain 8.9 ft. from side lot line. Located at 6120 Vernon Terr. on approx. 8,125 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (6) 6. (admin. moved from 7/16/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jay Sullivan, 6120 Vernon Terrace, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of a one-story addition to be located 8.9 feet from the eastern side lot line and 8.8 feet from the western side lot line. He said the applicant also requested a second-story bathroom addition to be located 8.9 feet from the western side lot line, and a second-story addition 5.1 feet from the eastern side lot line. He said the applicant had also requested that an existing kitchen addition be allowed to remain 8.9 feet from the western side lot line. Mr. Bernal said the minimum side yard requirement was 10 feet; therefore, variances of 1.1 feet and 1.2 feet for additions to both of the lot lines respectively were requested. He said the applicant also requested variances of 1.1 feet for the two-story addition, 4.9 feet for the second-story bathroom and 1.1 feet for the existing kitchen addition.

Mr. Sullivan presented the variance request as outlined in the statement of justification submitted with the application. He stated that the house had been built in 1938 and his family had moved into it in 1996. He said that other than an 8 foot by 10 foot kitchen addition done in 1976, the house had remained unchanged. He said that by design, the only way to expand the house was to add onto the sides and rear of the house. He said he had been working with architects for several months and had come up with a design that allowed for expansion without further encroachment on the side setbacks. He gave details of how they proposed to

upgrade the house. He said that most of the houses in the neighborhood had been expanded in the past few years, and they had the support of all their neighbors.

Mr. Hart asked about the garage in the backyard. Mr. Sullivan replied that the garage was actually a shed since there was no way to access it by car any more, and was used solely for storage.

Mr. Hart asked for clarification of the steps on the current plat. Mr. Sullivan explained that the proposed area would be a stoop to go into the kitchen.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MV-080 for the reasons noted in the Resolutions.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAY R. SULLIVAN, VC 2002-MV-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.9 ft., 8.8 ft. and 5.1 ft. from side lot lines and permit addition to remain 8.9 ft. from side lot line. Located at 6120 Vernon Terr. on approx. 8,125 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (6) 6. (admin. moved from 7/16/02). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 2002; 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 applicant presented the history of the site for justification.
4. The lot is exceptionally narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the of additions as shown on the plat prepared by J.C. Timmons, Architect, dated May 7, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 539, July 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF CAPITAL WORSHIP CENTER, SP 02-Y-001 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and a child care center. Located at 7000 Ordway Rd. on approx. 11.72 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 71B, 72, 73, 76B and 76C. (Administratively moved from 4/9/02 and 4/23/02 per appl. req.) (Cont'd from 5/28/02).

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 Fox, Agent, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. He said the applicants sought approval of a special permit to allow construction of a church and childcare center. He said the proposed church would be located in the northwest quadrant of the site, which consisted of a building to be constructed in two phases. Mr. Bernal stated that Phase I consisted of 33,500 square feet, 500 seats, 221 parking spaces and a child care center for 90 children. He said the proposed Floor Area Ratio was 0.65.

Mr. Bernal stated that Phase II proposed a fellowship hall, a classroom addition containing 10,000 square feet, and an additional 79 parking spaces and 400 seats. He said at the completion of Phase II, the structure would contain 43,500 square feet, 900 seats, and 300 parking spaces with an FAR of 0.85.

Mr. Bernal stated that the proposed child care center would operate Monday through Friday between the hours of 9:00 a.m. and 3:00 p.m. He said a 3,645 square foot fenced play yard was proposed to be built along the northwestern portion of the building in the front yard, adjacent to Compton Road. He said the childcare center would be housed within the proposed church building of Phase I, then later moved to the Phase II structure at the time of completion. He said access to the proposed site was via the main entrance on Ordway Road near the southeast corner of the site. He said the second access point was proposed from Compton Road near the center portion of the site to allow access from Old Centreville Road.

Mr. Bernal stated that on the revised plat, the tabulations indicated that 50% of the site would remain as undisturbed open space at the completion of Phase I. He said 47.5% of the site would remain as undisturbed space at the completion of Phase II.

Mr. Bernal stated that the subject property was located in the upper Occoquan Water Shed Protection Overlay District and was zoned R-C. He said the intent of the zoning had been to establish very low land uses and land use densities as a primary water quality mechanism within the watershed. He said the Zoning Ordinance did allow for special permits and special exception uses in the RC district; however, the Comprehensive Plan stated that such uses needed to be rigorously reviewed and the uses would be approved only if certain conditions were met.

Mr. Bernal stated that staff believed more could be done to concentrate and reduce the bulk of the structure and ensure more preservation of undisturbed open space. He said that at the completion of Phase II, the size and scale of the proposed development was pushed to the northern and eastern limits of the site closest to the existing residential uses and left very little screening along the northern lot line. He said only 47.5% of the site would be left as undisturbed open space and it would have visual impacts on adjacent residential uses and would not meet the intent of the RC Zoning.

Mr. Bernal stated that due to the aforementioned reasons and the additional reasons which had been outlined in the Staff Report, staff believed that all the applicable standards had not been met or satisfied with the application as submitted. He said that staff believed that approval of only Phase I, along with the adoption of the revised proposed development conditions, would address most of staff's issues and would satisfy the provisions of the Zoning Ordinance. He said that staff received a revised plat, dated June 18, 2002. He said the submitted changes to the revision showed an increase to the undisturbed open space from 46% to 47.5% and the two additional parking spaces that had been reconfigured provided a three to one parking ratio.

Mr. Bernal stated that, even with the proposed changes, the bulk and amount of pervious surface remained the same, and staff still believed it was too intense. He said staff continued to recommend approval of Phase I, subject to the revised development conditions set forth in Attachment 1 of the Addendum, dated July 2, 2002.

Mr. Hart asked Mr. Bernal to read the note on the right hand side of the revised plat. He said the note was for the entrance to Compton Road and stated "provide channelized right-in and right-out with gate at this entry". He asked Mr. Bernal how the Department of Transportation (DOT) and the Virginia Department of Transportation (VDOT) felt about that.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that she believed Condition 18 addressed that issue. She said that DOT and VDOT preferred that particular entrance not to be constructed; however, if it was, then Condition 18 would take over and they would have to do full frontage improvements and VDOT would review it. She said VDOT might not allow the right-in and right-out only.

Stephen Fox, Agent, stated that he wanted to note that the applicant had acceded to the VDOT requirement that if Compton Road were used, then the applicants would make the full frontage improvements. He said the applicants saw that as an election, and it was their intent at the outset not to use Compton Road.

Mr. Fox stated that if they chose to make an entry on Compton Road, they did not want to allow any cut-through traffic by motorists to avoid backups at Compton Road and Route 28 during the week. He said they would not be opposed to a development condition which would state that even if improved, the subject property would be gated during the week.

Mr. Fox stated that there had been a slight disagreement between staff and the applicant. He said the applicants had come a long way and felt that the application was in a form that could be approved, both for Phase I and Phase II.

Mr. Fox stated that he felt the application presented was sensitive to the environment. He said the environmental section of the Planning Department had not made any negative comments about it and they thought it should get approval.

Mr. Fox stated that when the applicants went to the last Western Fairfax Committee meeting, he understood that there were only two issues. He said the Committee wanted them to provide a three to one ratio for the parking. He said they had been two spaces short of that goal, and with some re-configuring, got two more spaces. He said he was under the impression that the amount of undisturbed open space in Phase II was not an issue. He said they had set a goal of at least 47%, which had previously been approved by the BZA and acceptable to the Committee.

Mr. Fox stated that when they received deferral, the applicants explored other options for the issues. He said they found that placing the storm water management underground would be cost prohibitive. He said that re-engineering the existing pond would give them additional undisturbed area. He said he felt that the applicants had made great efforts to get 2A approval. He said they were at a level of FAR which was below that prescribed in the Ordinance and they had reached a threshold of undisturbed open space that had been previously approved by the 2A.

Mr. Hart asked if staff had gone through the revised plat to make sure that there were no other refinements that had been made between May 2, 2002, and June 18, 2002. Mr. Bernal replied that they had.

Ms. Gibb asked for clarification of the preschool and child care facilities. Mr. Fox replied that they had limited the hours of the facility so that it did not interfere with peak traffic hours and they anticipated it would be mostly childcare during that time.

Mr. Fox stated that there were a number of church members present who had attended the Board meeting to show their support for the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 02-Y-001 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF CAPITAL WORSHIP CENTER, SP 02-Y-001 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and a child care center. Located at 7000 Ordway Rd. on approx. 11.72 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 71B, 72, 73, 76B and 76C. (Administratively moved from 4/9/02 and 4/23/02 per appl. req.) (Cont'd from 5/28/02). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The fact that there are no speakers present indicates that the applicant has worked diligently towards any citizen concerns.
3. The addition of another parcel of land by the applicant helped significantly to increase the open space.
4. The parking issue was resolved by the applicant reconfiguring the parking lot to get a parking ratio of 3 seats per space.

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, on Ordway Road (11.72 acres) and is not transferable to other land.
2. This Special Permit is granted only for a church and child care center with a maximum daily enrollment of ninety (90) children as indicated on the special permit plat prepared by William M. Robson, dated October 18, 2001, as revised through July 2, 2002, and approved with this application, as qualified by these development conditions which approves construction of Phase I and Phase II of the proposed application.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the church shall be 500 in Phase I and 900 in Phase II.
6. The maximum daily enrollment for the child care center shall be 90 children.
7. The maximum hours of operation for the child care center shall be limited to 9:00 a.m. to 3:00 p.m., Monday through Friday.
8. Two hundred and nineteen (219) parking spaces shall be provided in Phase I; a total of 300 spaces shall be provided in Phase II. All parking shall be on site within the designated Phase I and Phase II parking area as shown on the special permit plat.
9. The outdoor recreational area consisting of a maximum of 3,645 square feet shown on the special permit plat shall be located in the area shown on the special permit plat and shall be enclosed with a four (4) foot high board on board fence.
10. Existing vegetation shall be maintained and shall be used to satisfy the Transitional Screening I requirement along the southern lot line. Transitional Screening I shall be provided along the eastern and northern lot lines as shown on the special permit plat and be supplemented as needed with evergreen plantings to obtain the effectiveness of Transitional Screening I as determined by the

Urban Forestry Branch. The size, type and location of all vegetation shall be as approved by the Urban Forestry Branch of DPWES. Additionally, notwithstanding what is shown on the Special Permit Plat, every effort shall be made to preserve the majority of the existing vegetation on site. In consultation with the Urban Forester, the applicant shall designate individual trees to preserve while allowing some areas through which the church may be viewed from both Ordway Road and Compton Road.

The Barrier requirements shall be waived.

11. At the time of either site plan submission or grading plan submission, whichever occurs first, the applicant shall submit a tree preservation and restoration plan as part of the first and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division.

The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread, and condition rating percentage of all trees 20 inches in diameter and greater 25 feet to either side of the limits of clearing and grading shown of the special permit plat for the entire site. The tree survey shall include areas of limits of clearing and grading not shown on the special permit plat resulting from engineering requirements, such as off-site clearing and grading for utilities and grading or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of The Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save areas depicted outside the limits of clearing and grading as shown on the special permit in undisturbed open space. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, and there shall be no fertilizing or mowing of weeds or grass within the open space areas. Tree preservation shall be implemented pursuant to the study as approved by the Urban Forestry Branch.

The restoration plan shall include the planting of saplings, two (2) to four (4) feet in height and/or evergreen seedlings outside the delineated limits of clearing along the southern portions of the site as determined by the Urban Forestry Division. Species shall be predominately Virginia Pine and Cedars, but may also include white pine, loblolly pine, short-leave pine or other native evergreen varieties. No existing wooded areas may be disturbed to plant the restoration materials.

12. The limits of clearing and grading shall be no greater than as shown on the special permit plat and shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Branch, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. All of the site outside the limits of clearing and grading shall remain as perpetually undisturbed open space and if any feature such as the SWM pond is eliminated or reduced in size, the area of that feature shall become part of the perpetually undisturbed open space.
13. A minimum of 50% shall be preserved and designated as perpetually undisturbed open space during Phase I: a minimum of 47.5% of the site shall be preserved and designated as perpetually undisturbed open space in Phase II. This may be achieved through a combination of strategies including, but not limited to, reduction in the limits of clearing and grading, reduction in the size of the stormwater management facility, and/or increasing the amount of tree preservation, where possible.

All areas shown to be preserved shall be designated as perpetually undisturbed open space and maintenance shall consist of only of the removal of 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 grasses in the perpetually undisturbed open space.

14. The construction of any structures or fences in the designated undisturbed open space shall be prohibited. The undisturbed open space shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass.
15. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by the DPWES. Foundation plantings around the church building shall be provided for the purpose of softening the visual impact of the buildings and blend the development in with the adjacent residential subdivision. The type, size and location of these plantings shall be approved by the Urban Forestry Branch and shall depict a combination of flowering and evergreen shrubs and ornamental tree plantings along the perimeters of the parking areas and building foundation landscaping plantings with particular emphasis along the northern lot line.
16. Stormwater Management/ Best Management Practices shall be provided in accordance with the Chesapeake Bay Preservation Ordinance and the Public Facilities Manual standards for developments in the Water Supply Protection Overlay District as approved by DPWES. If SWM or BMP's are waived, reduced in size or placed in underground detention facilities, the area(s) presently depicted on the special permit plat for the pond shall become part of the undisturbed open space on site. In order to restore a natural appearance to the proposed stormwater management pond located southeast of the structure adjacent to the main driveway, a landscape plan shall be submitted as part of the first submission of the site plan. The plan shall show the restrictive planting easement of the pond, and extensive landscaping in all areas outside of that restrictive planting easement, to the extent feasible in accordance with the planting policies of Fairfax County. If the SWM/BMP facility as depicted on the special permit plat should be increased in size to accommodate stormwater run-off or BMP requirements and additional clearing is required, a special permit amendment shall be required.
17. Right of way of 35 feet along Ordway Road shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval, or upon demand, whichever occurs first for the right turn lane of the main entrance. Full frontage improvements at 26 feet from centerline shall be provided on Ordway Road with a right-turn lane striped as shown on the plat.
18. Right-of-way of 45 feet from centerline of Compton Road shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval, or upon demand, whichever occurs first. Should the applicant elect to construct an access to Compton Road as shown on the Special Permit Plat, full frontage improvements shall be constructed and be subject to review and approval of VDOT and DPWES.
19. Should the entrance to Compton Road be constructed and a gate is installed, the gate shall be located a minimum of 60 feet from the edge of pavement to provide for storage for vehicle queue and turn around. The gate shall be closed to through traffic Mondays through Fridays. The entrances shall be signed: "For Use By Church Only. No Through Traffic".
20. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixture shall not exceed 12 feet and shall be full cut-off lights.
  - The lights shall be of a design, which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.



- There shall be no up-lighting of any of the proposed buildings. Except for necessary low level security lighting, site and building lighting shall be turned off by 10:30 p.m.
21. The use of loudspeakers, music amplification systems, or bull horns shall not be permitted outside the building.
  22. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance. If lighting is permitted for the sign, it shall only be as backlighting.

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. 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 10, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 545, July 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BOB HOTALING, VC 2002-MA-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. from side lot line and 30.3 ft. from front lot line and permit addition to remain 13.5 ft. from side lot line. Located at 6928 Alpine Dr. on approx. 25,351 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((2)) 34 and 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. Bob Hotaling, 6928 Alpine Drive, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant sought a variance to permit construction of a second story addition to be located 11.8 feet from the western side lot line. She said the variance also consisted of a request to permit a covered porch 30.3 feet from the front lot line, and an enclosed porch addition to remain 13.5 feet from the western side lot line. She said the Zoning Ordinance required a 15 foot side yard minimum and a 35 foot front yard minimum in the R-2 zoning district; therefore, variances of 3.2 feet for the second story addition, 4.7 feet for the covered porch in the front yard, and 1.5 feet for the existing enclosed porch in the side yard were requested.

Mr. Hotaling presented the variance request as outlined in the statement of justification submitted with the application. He stated that his house was a 1940 Cape Cod and he needed more space. He said the area for head space in the upstairs was just 6.5 feet, so it was necessary to duck when passing through the doorways and had proven to be unusable. He said the Civic Association for Wynfield supported his application and was happy that there would be some improvement on the property on the exterior. He said they would be staying inside the original footprint, but just building upwards.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002-MA-063 for the reasons noted in the Resolution.

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

BOB HOTALING, VC 2002-MA-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. from side lot line and 30.3 ft. from front lot line and permit addition to remain 13.5 ft. from side lot line. Located at 6928 Alpine Dr. on approx. 25,351 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((2)) 34 and 35. 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 2, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property is exceptionally narrow.
3. The addition will be upstairs and will not have any more encroachment into the side yards.
4. The home was built in 1953.
5. The addition will enhance the character of the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of additions, shown on the plat prepared by George M. O'Quinn, dated March 29, 2002, as revised through May 15, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained for the shed prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 7-0 vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 547, July 2, 2002, (Tape 1), Scheduled case of:

- 9:00 A.M. SUN M. RO, SP 2002-BR-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 deck to remain 2.5 ft. from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with VC 2002-BR-030). (Def from 5/21/02 and 6/11/02 for decision only)
- 9:00 A.M. SUN M. RO, VC 2002-BR-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. from side lot line and eave 0.5 ft. from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with SP 2002-BR-014). (Def from 5/21/02 and 6/11/02 for decision only)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sun M. Ro, 8731 Shadow Lawn Court, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance and special permit requests as contained in the staff report. He said the applications were previously heard on June 11, 2002, and had been deferred to allow the applicant time to reconfigure the proposed sunroom addition. He said the applicant revised the plat, dated May 28, 2002, making the sunroom a little smaller and moving it back from the rear lot line in order for it to be constructed 4.9 feet from the rear lot line, with an eave of 3.6 feet. He said the original request was for 1.5 feet from the rear lot line with an eave of 0.5 feet from the rear lot line.

Mr. Bernal stated that he had submitted a memo to the Board to reflect the revision of the plat.

Page ~~548~~ July 2, 2002, (Tape 1), SUN M. RO, SP 2002-BR-014 and SUN M. RO, VC 2002-BR-030, continued from Page ~~547~~

Mr. Hart asked Mr. Bernal to clarify the revisions to the plat and how the development conditions affected the proposed additions. Susan Langdon, Chief, Special Permit and Variance Branch, explained the plat and what had been advertised.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 2002-B-014 for the reasons noted in the Resolutions.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUN M. RO, SP 2002-BR-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 deck to remain 2.5 ft. from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with VC 2002-BR-030). (Def from 5/21/02 and 6/11/02 for decision only). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 2002; and

WHEREAS, the Board has made the following 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 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 ration 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 Revised Development Conditions dated July 2, 2002:

1. This special permit is approved for the location of a deck as shown on the plat prepared by George M. O'Quinn, dated December 4, 2001, as revised through May 28, 2002, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. 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 10, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley moved to approve VC 2002-BR-030 for the reasons noted in the Resolutions.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUN M. RO, VC 2002-BR-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. from side lot line and eave 0.5 ft. **(THE BOARD APPROVED THE ADDITION 4.9 FT. AND EAVE 3.6 FT.)** from side lot line. Located at 8731 Shadow Lawn Ct. on approx. 8,909 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 1. (Concurrent with SP 2002-BR-014). (Def. from 5/21/02 and 6/11/02 for decision only). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 2, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant is to be commended for reducing the amount of the variance requested, and has made a good faith effort.
3. The statement of justification validates 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 an addition (sunroom) as shown on the plat prepared by George O. O'Quinn, dated December 4, 2001, and as revised through May 28, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. The deck along the eastern and southern sides of the proposed sunroom shall be removed to the point of the approved stairs.

This approval, contingent upon above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 31, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 551 July 2, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-M-009 previously approved for a place of worship to permit a private school of general education which has an enrollment of 100 or more students daily. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with VC 01-M-008). (Moved from 4/3/01 and 5/22/01) (Deferred from 7/17/01 and 10/30/01) (Def. for dec. only from 1/29/02)

Chairman DiGiulian stated that on June 25, 2002, the Board issued an intent to defer SPA 84-M-009-2 to December 10, 2002. Mr. Ribble moved to defer SPA 84-M-009-2. Mr. Hart seconded the motion, which carried by a 7-0 vote.

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Page 551, July 2, 2002, (Tape 1 & 2), Scheduled case of:

9:30 A.M. WANDA V. MOUSER, DVM, A 2002-SU-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that proposed fenced outdoor extension to kennels is not in substantial conformance with Special Permit SP 00-Y-040. Located at 7300 Ordway Rd. on approx. 15.97 ac. of land zoned R-C and WS. Sully District. Tax Map 74-1 ((1)) 22.

Keith Martin, Walsh, Agent, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, came forward stating that they were ready to proceed with the hearing.

Mavis Stanfield, Staff Coordinator, presented a brief summary of the Appeal as contained in the staff report. She stated that the application was an appeal of the Zoning Administrator's determination that the proposed fenced outdoor extensions to the dog kennels were not in substantial conformance with special permit SP 00-Y-040. She said the special permit had been approved on October 3, 2000, by the BZA for a veterinary hospital ancillary to kennels and boarding stables.

Ms. Stanfield stated that it was staff's position that the fenced extension of the kennels constituted a change in the use of the approved exercise area from the low intensity dog walking area shown on the special permit plat, to an outdoor kennel area where dogs could be left unattended. It was staff's view that the proposed fence extension of the kennels was not in substantial conformance with the approved special permit for the subject property.

Keith Martin, Agent, showed a comparison of the site plan and the approved plat to compare the dog exercise areas. He stated that the intent of the boarding area was for luxury suites for the high maintenance dogs whose owners would be paying \$60 per night for the dogs to stay there and the kennels with runs cost much less. He said much less individual attention would be given to the dogs in the regular runs versus the luxury boarding suites. He said the exercise area would remain an exercise area.

Mr. Martin stated that the fences around the exercise area were not an extension of the kennel, but a subdivision of the exercise area. He said the intent of the development conditions was to preclude any expansion or an unattended use farther away from the western property line. He described the system used in exercising the dogs when they were let in and out.

Mr. Martin stated that the fence was not an accessory structure as stated in the Staff Report and the interpretation from Ms. Byron. He said it was a subdivided exercise area. He said an expert, who was present, would testify and define a kennel as the area within the building where the animals sleep, seek shelter, and get food and water.

Mr. Martin stated that Clinton Abernathy, Site Plan Division, had approved the site plan with the subdivided exercise area. He said when Dr. Mouser asked for an interpretation for a temporary trailer, DPZ questioned not only the trailer issue, but also the fence issue.

Ms. Gibb stated that she found it difficult to read the plat, and asked Mr. Martin for further clarification regarding the subdivision of the fenced area. Mr. Martin used the viewgraph and described the housing and usage of the kennels.

Wanda Mouser came forward to speak. She gave details in the difference between the dogs that were regularly boarded as opposed to those that had luxury suites. She gave details as to the purpose and utilization of the subdivided runs for the dogs.

Mr. Hart asked Ms. Mouser why the new changes had not been part of the original site plan. She replied that she had only 18 months from the time she sold her property to get the plans done and get the clinic built. She said they were trying to rush things through and the fencing was a small detail that she had forgotten.

Mr. Hart asked Susan Langdon, Chief, Special Permit and Variance Branch, if Condition 6 was the main problem. He said it read "The kennel and veterinary hospital shall be located entirely within the main structure and barn". She replied that was a problem, but also fences were not a structure that needed a building permit, they were accessory structures as stated in Article 10 of the Zoning Ordinance. She said, therefore, it should have been shown on the plat.

Mr. Hart asked if there was more intensity closer to the street. Ms. Langdon replied that was part of the problem and had it been shown on the special permit plat, it would have been discussed at that time. She said even though there was an exercise area, it did not show that, and the dogs were not under a roof, and the development conditions stated that everything would be under a roof.

Ms. Mouser stated that for the record she was not trying to sneak the fence in over the special use permit and not have anyone know about it. She said when they went to the County with the subdivided fences, they spoke with Clinton Abernathy and told him what they wanted to do. She said they told him it was something they had forgotten about. She asked if he thought this would be a problem, he said he checked with someone and came back and stated that he saw no problems with it, and continued with the site plan approval.

Ms. Langdon stated that the site plan had not been approved at that point, and the fence was one of the issues Mr. Abernathy had discussed with staff, along with several other interpretations.

Mr. Kelley asked why this was not a SPA. Mr. Martin replied that it was not an SPA because it would be another extension of time and additional cost to the clinic for what he believed should be an administratively approved issue.

Mr. Hart asked what the open space percentage was and Ms. Langdon replied that with some re-engineering, 50% of the land remained undisturbed.

Helen Berry came forward to speak in support of the application. She stated that she had been training, showing and breeding dogs since 1967. She said that Deepwood was exactly what was needed for a private kennel for show dogs.

Ms. Stanfield stated that the outdoor extensions would only be utilized for 10 minute intervals as stated by the applicant, but that could not be regulated as it could be under a special permit amendment as part of the conditions.

Mr. Martin stated in his rebuttal that Condition 6 specified that the kennel would be part of the main building. He said it did not differentiate between the outdoor area. He said on the special permit plat, the other buildings say kennels with runs, and the reason for that was because the runs were roofed and they also had to be calculated in gross floor area if they were roofed. However, the outdoor exercise area was not roofed, but merely subdivided.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that, had this issue not been overlooked originally, it probably would have passed without a problem. He said there was always a lot of argument about the development conditions. He said then you run into this situation where there is a little ambiguity, or maybe they were not quite as specific as they ought to be. He said he appreciated what Dr. Mouser said in that this was a detail that was overlooked. Mr. Hammack moved to uphold the decision of the Zoning Administrator. Ms. Gibb seconded the motion.



Mr. Kelley stated that he was opposed to the motion. He said there was ambiguity, but he thought that was also why the Zoning Administrator was granted the authority and power to make interpretations. He said he believed that this was the kind of case that called for an interpretation.

Mr. Pammel stated that he would not support the motion either. He felt that this was very minor. He said they were not extending the kennel nor the floor area or anything else, but simply putting in a fenced area for the benefit of the dogs in that location.

Mr. Hart stated that he would support the motion. He said it was a very close call, but the Board had to be consistent.

Chairman DiGiulian stated that he would not support the motion. He said he would associate himself with Mr. Kelley and Mr. Pammel's comments.

The motion failed for the lack of four votes. Mr. Kelley, Mr. Pammel, Mr. Ribble, and Chairman DiGiulian voted against the motion.

Mr. Pammel moved that the Board overturn the interpretation of the Zoning Administrator for 2002-SU-010 for the reasons previously stated. Mr. Kelley seconded the motion, which carried by a vote of 4-3 and the determination was overruled. Mr. Hart, Ms. Gibb, and Mr. Hammack voted against the motion.

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9:30 A.M. WAL-MART STORES EAST, INC., A 2002-LE-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has located metal storage containers on property in the PDC District as an accessory secondary use, without an approved Proffered Condition Amendment, Final Development Plan Amendment and Site Plan, in violation of Zoning Ordinance provisions. Located at 5885 Kingstowne Blvd. on approx. 14.82 ac. of land zoned PDC and I-4. Lee District. Tax Map 91-2 ((1)) 32B. (admin moved from 6/25/02)

Chairman DiGiulian stated that Wal-Mart Stores East, Inc., appeal application A 2002-LE-009 had requested a withdrawal. Mr. Pammel moved to accept the withdrawal request, which was seconded by Mr. Hammack and carried by a 7-0 vote.

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9:30 A.M. SHIRLEY M. HUNTER, TRUSTEE AND T. WILLIAM DOWDY, TRUSTEE, A 2002 -MV-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a tenant to operate a service station/quick service food store/car wash without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 8101 Backlick Rd. (aka 8101 Loisdale Rd.) on approx. 34,309 sq. ft. of land zoned C-8. Mt. Vernon District. Tax Map 99-1 ((1)) 4.

Chairman DiGiulian stated that Shirley M. Hunter, Trustee and T. William Dowdy, Trustee, appeal application A 2002-MV-014 had been deferred to July 23, 2002.

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Additional Time Request  
Dulles Indoor Sports Complex, LLC, SP 99-Y-043

Page 554 July 2, 2002, (Tape 2), After Agenda Items, continued from Page 553

Mr. Pammel moved to approve the additional time of 18 months for SP 99-Y-043. Mr. Ribble seconded the motion, which carried by a vote of 7-0. The new expiration date was January 26, 2004.

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Page 554 July 2, 2002, (Tape 2), After Agenda Items:

Additional Time Request  
Florin United Methodist Church, SPA 88-C-057-2

Mr. Ribble moved to approve the additional time of six months for SPA 88-C-057-2. Mr. Pammel seconded the motion, which carried by a 7-0 vote. The new expiration date was December 6, 2002.

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Page 554 July 2, 2002, (Tape 2), After Agenda Items:

Approval of June 25, 2002 Resolutions

Mr. Pammel moved to approve the June 25, 2002 Resolutions. Mr. Hammack seconded the motion, which carried by a 7-0.

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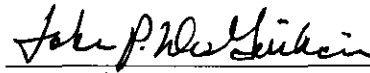
As there was no other business to come before the Board, the meeting adjourned at 11:01 a.m.

Minutes By: Judith A. Gobbi

Approved on: March 25, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 9, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 555, July 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ALI R. ABTAHI & ANA T. JACOBS, VCA 00-D-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 00-D-134 to permit construction of addition 5.5 ft. from side lot line. Located at 2040 Kirby Rd. on approx. 17,328 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((3)) 33.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ana Jacobs, 2040 Kirby Road, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance amendment to a previously approved variance to permit the construction of a 2-story garage addition with a room above, to be located 5.5 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6.5 feet was requested. Mr. Bernal stated that the applicants' previously approved variance was granted on December 13, 2000, and permitted a 2-story garage addition to be located 5.67 feet from the side lot line. He said the previous approval was for an addition measuring 20.5 feet by 30.38 feet and only extended to the side. He said the proposed application was the same construction; however, with a 5.42 foot extension bump-out to the rear of the existing dwelling and garage addition.

Ms. Jacobs presented the variance request as outlined in the statement of justification submitted with the application. She said after the original variance was approved they realized that there was not enough space without expanding the garage. Ms. Jacobs stated that the lot was unusually shaped with a sanitary easement on the side and a creek running through the lot. She said they met the required standards for a variance. Ms. Jacobs stated that the adjacent neighbor supported the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VCA 00-D-134 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI R. ABTAHI & ANA T. JACOBS, VCA 00-D-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 00-D-134 to permit construction of addition 5.5 ft. from side lot line. Located at 2040 Kirby Rd. on approx. 17,328 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((3)) 33. Mr. 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 9, 2002; 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 prescribed criteria for the granting of a variance.
3. There are constraints imposed on the property as a result of a stream, a storm drainage easement, and a sanitary sewer easement on the east side of the property, thereby permitting the addition only

to occur on the west side of the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a two-story addition as shown on the plat prepared by George M. O'Quinn, dated, April 8, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0-1. Ms. Gibb abstained from the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 557 July 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOY M. HILL PHILLIPS, VC 2002-MA-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 6917 Barrett Rd. on approx. 8,649 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 268.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, Patio Enclosures, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 6.6 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 5.4 feet was requested for the kitchen and storage area addition.

Mr. Reames presented the variance request as outlined in the statement of justification submitted with the application. He said the variance was needed because of the location of the house on the lot. Mr. Reames said the variance request was minimal.

Mr. Hammack asked why the application was not administratively approved. Mr. Bernal replied because it was new construction.

There were no speakers, and Chairman DiGiulian closed the public hearing

Mr. Hammack moved to approve VC 2002-MA-069 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOY M. HILL PHILLIPS, VC 2002-MA-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 6917 Barrett Rd. on approx. 8,649 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 268. 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 9, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The house is sited to the rear of the lot leaving a very large front and side yards, but little room to expand in the back.
4. Only a small corner of the proposed addition 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 an addition as shown on the plat prepared by George M. O'Quinn, dated, June 13, 2001, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 559, July 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BRIAN KUNTZ, VC 2002-SU-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.3 ft. from rear lot line. Located at 3003 Jeannie Anna Ct. on approx. 9,082 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 953.

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 Kuntz, 3003 Jeannie Anna Court, Herndon, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a one-story addition to the dwelling to be located 18.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6.7 feet was requested.

Mr. Kuntz presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to put a room on top of the existing deck. Mr. Kuntz said the variance would not impact the neighbors.

Mr. Hart asked why the addition could not be shifted to the right. Mr. Kuntz replied that there was an addition already in that location.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-SU-074 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN KUNTZ, VC 2002-SU-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.3 ft. from rear lot line. Located at 3003 Jeannie Anna Ct. on approx. 9,082 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 953. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 9, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is small and narrow.
4. The dimension of the arc across the front of the property is about 40 feet causing very narrow side yards.
5. The lot is a trapezoidal shape which makes the building restriction line in the rear yard very close to the house on one side.
6. Based on the photographs and the statement of justification, there would be no detrimental impact on any neighbors.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by David Hangen, dated March 22, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 560, July 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ST. FRANCIS EPISCOPAL CHURCH OF GREAT FALLS, VA, SPA 82-D-087-4 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-087 previously approved for a church with child care center and nursery school to permit site modifications. Located at 9220 Georgetown Pi. on approx. 6.81 of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 8.



Page 561, July 9, 2002, (Tape 1), ST. FRANCIS EPISCOPAL CHURCH OF GREAT FALLS, VA, SPA 82-D-087-4, continued from Page 560

Chairman DiGiulian noted that the application had been administratively moved to July 30, 2002.

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Page 561 July 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. BRANHAM, VC 2002-MA-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line and 25.5 ft. from front lot line. Located at 6305 Beachway Dr. on approx. 21,119 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 1020A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Branham, 6305 Beachway Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 8 feet from the side lot line and 25.5 feet from the front lot line. A minimum side yard of 15 is required and a minimum front yard of 35 feet is required; therefore, variances of 7 feet for the side yard and 9.5 feet for the front yard were requested. Ms. Stanfield stated that subsequent to the acceptance of the application, the Board of Supervisors adopted a Zoning Ordinance Amendment which precluded more than 25% of the front yard to be utilized as surface area for a driveway or for parking. She said staff informed the applicant of the Zoning Ordinance Amendment and subsequently, the applicant revised the plat and it had been distributed to the BZA.

Mr. Hammack asked what would happen with the existing carport. Mr. Branham stated that it would be enclosed.

Mr. Branham presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to build a two-car garage. Mr. Branham said the lot was steeply sloped which caused the proposed location to be the best place for the addition.

Mr. Hammack asked why the applicant could not expand the existing carport. Mr. Branham replied that the architect and the affected neighbors thought it would not be aesthetically pleasing and there would be no room for 3 cars and a rowing boat.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MA-070 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES M. BRANHAM, VC 2002-MA-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line and 25.5 ft. from front lot line. Located at 6305 Beachway Dr. on approx. 21,119 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 1020A. 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 9, 2002; 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 required standards for a variance.
3. The lot is narrow and the topographical conditions on the lot prevent the addition from being built in another location.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition, as shown on the plat prepared by Lawrence H. Spilman, III, dated April 3, 2002, as revised through June 27, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Pammel and Mr. Hammack voted against the motion.

Page 563 July 9, 2002, (Tape 1), JAMES M. BRANHAM, VC 2002-MA-070, continued from Page 562

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 503 July 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT M. & BARBARA B. NOVOGRATZ, SP 2002-MV-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 shed to remain 2.0 ft. from rear lot line and 0.9 ft. from side lot line, trellis 1.0 ft. from rear lot line and deck 5.5 ft. from side lot line. Located at 8724 Waterford Rd. on approx. 15,344 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((6)) (16) 23A. (Admin moved from 7/2/02 per appl. req)

Chairman DiGiulian noted that SP 2002-MV-024 had been administratively moved to September 10, 2002, at the applicant's request.

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Page 563 July 9, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT S. AND ROSA E. YOUNG, TRUSTEES, SP 2002-MA-027 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 7.9 ft. from side lot line. Located at 7415 Beverly Manor Dr. on approx. 8,704 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((37)) 8. (Concurrent with VC 2002-MA-078).

9:00 A.M. ROBERT S. AND ROSA E. YOUNG, TRUSTEES, VC 2002-MA-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.2 ft. from rear lot line. Located at 7415 Beverly Manor Dr. on approx. 8,704 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((37)) 8. (Concurrent with SP 2002-MA-027).

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 Young, 7415 Beverly Manor Drive, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on an error in building location to permit an addition to remain 7.9 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a modification of 2.1 feet was requested. The applicant also requested a variance to permit the construction of an addition to be located 11.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 13.8 feet was requested. Ms. Stanfield noted that a revised affidavit had been distributed to the BZA members.

Mr. Young presented the requests as outlined in the statement of justification submitted with the applications. He said the variance request was to build a sunroom to house plants. Mr. Young stated that the garage wall and storage shed were built in error over 17 years ago when a contractor built a garage wall 2.1 feet short of the Zoning Ordinance requirement. Mr. Young said the neighbors were in support of the applications.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2002-MA-027 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

Page 564, July 9, 2002, (Tape 1), ROBERT S. AND ROSA E. YOUNG, TRUSTEES, SP 2002-MA-027, and ROBERT S. AND ROSA E. YOUNG, TRUSTEES, VC 2002-MA-078, continued from Page 563

ROBERT S. AND ROSA E. YOUNG, TRUSTEES, SP 2002-MA-027 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 7.9 ft. from side lot line. Located at 7415 Beverly Manor Dr. on approx. 8,704 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((37)) 8. (Concurrent with VC 2002-MA-078). 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 9, 2002; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a garage addition, as shown on the plat prepared by Thomas F. Conlon, dated March 12, 2002, as revised through April 25, 2002, 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 17, 2002. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 2002-MA-078 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT S. AND ROSA E. YOUNG, TRUSTEES, VC 2002-MA-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.2 ft. from rear lot line. Located at 7415 Beverly Manor Dr. on approx. 8,704 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((37)) 8. (Concurrent with SP 2002-MA-027). 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 9, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Based on the applicant's testimony, there would be no impact on the neighbors because the house 36 is feet from the rear lot and the photographs submitted reflect a fence and shrubbery in the rear.
3. The lot is small and narrow and there is no other location for the addition.
4. The request is reasonable.
5. The applicants' statement of justification and testimony indicate 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.

Page 500, July 9, 2002, (Tape 1), ROBERT S. AND ROSA E. YOUNG, TRUSTEES, SP 2002-MA-027, and ROBERT S. AND ROSA E. YOUNG, TRUSTEES, VC 2002-MA-078, continued from Page 505

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 a sunroom addition, as shown on the plat prepared by Thomas F. Conlon, dated March 12, 2002, as revised through April 25, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 510, July 9, 2002, (Tape 1), Scheduled case of:

9:30 A.M. A.W. RUDZINSKI AND CHARLOTTE JONES, A 2002-SU-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property was not legally subdivided and, therefore, no Building Permit can be issued for the erection of any building or structure on the lot, in accordance with Par. 1 of Sect. 18-603 of the Zoning Ordinance. Located at 15400 Lee Hwy. on approx. 2.22 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((3)) 1. (Admin moved from 5/14/02 and 6/25/02)

Mr. Hart gave a disclosure indicating that he was a member of the Virginia Run Community Association and they had a pool and clubhouse on Lots 4 and 5, and they owned Lot 3. He said for those reasons he would recuse himself from participating in the public hearing.

William Shoup, Deputy Zoning Administrator, stated that the issue was the determination that the appellants' property was not a buildable lot. He said the property was zoned R-C which had a 5 acre minimum lot area requirement. Mr. Shoup said the subject lot had an area of 2.2 acres; however, Sect. 2-405 of the Zoning Ordinance provided that a lot that did not meet the current lot size requirements, but did meet them at the time of its creation, could be used for any permitted use in that zoning district providing that the lot could comply with all other regulations of the Zoning Ordinance. Mr. Shoup stated that research revealed that the lot was created in July of 1944. He said at that time, it did meet the minimum lot area requirements that were in effect. He said Par. 1 of Sect. 18-603; precluded the issuance of building permits for a lot which was not created in accordance with the subdivision regulations. Mr. Shoup stated that at the time of the creation of the lot in 1944, there were subdivision regulations which required that a plat be approved by the County

Surveyor, the Chairman or Vice Chairman of the Planning Commission and the Zoning Administrator and the plat had to be recorded in the land records. Mr. Shoup said there was no record of any plat approval or recordation for a plat for Lot 1. He noted that in the Deeds of Conveyance, on this lot and other lots surrounding it, there was reference to a 1943 survey, prepared by Joseph Berry, the County Surveyor at that time. Mr. Shoup said copies of the survey found in the mapping office did not show the requisite approval. He said there was no evidence that such plat had ever been recorded. Mr. Shoup said based on the information, it was concluded that Lot 1 was not created in accordance with the Subdivision Ordinance regulations. He said, therefore, no building permit could be issued for the property and it was not a buildable lot. Mr. Shoup distributed the 1943 plat which reflected what was referred to as the Swart Farm subdivision.

Ms. Gibb asked what happened to the other Swart Farm lots and if there were any other lots in the same situation. Mr. Shoup said there were other lots in the same situation and some were subdivided.

Mr. Pammel asked if other uses such as agriculture, raising of livestock, and other uses where a structure was not involved could be done on the property. Mr. Shoup said that was correct, but there was a 5 acre minimum for agriculture in the R-C District.

Mr. Pammel said at the time the lot was created it was a permitted use. Mr. Shoup said Sect. 2-405 of the Zoning Ordinance was the provision that allowed the property to be used for any permitted use as it satisfied the minimum lot size required at the time it was created. He said he did not know if that extended to a current requirement for a 5 acre minimum for agriculture.

Mr. Pammel asked if the lot was deemed unbuildable would that be considered confiscation and depriving the user of any reasonable use of their land. Mr. Shoup said the County Attorney's office was not represented, but he thought that was a legal question. He said he did not consider it to be confiscation. Mr. Shoup said if it was not created legally, that did not fall back on the County.

Chairman DiGiulian asked what recourse a landowner had and what could they use the property for legally. Mr. Shoup said he did not think there was any lawful use that could be established.

Chairman DiGiulian stated that did not seem equitable to him.

Mr. Shoup said there were a number of those types of lots out there and some did not meet zoning requirements. He said as noted in the staff report, the Board of Supervisors asked the Department of Public Works and Environmental Services (DPWES) staff to investigate a proposed amendment to the Subdivision Ordinance that would allow for validation of lots. Mr. Shoup said this was one situation that could be eligible for that.

Chairman DiGiulian asked what was the status of Lot 2 and Lot 2A. Mr. Shoup replied that they did staff did not research every lot in the subdivision, but Lot 2 had a building on it, and Lot 2A did not.

Steve Fox, Agent for the appellants, stated that the appellants owned the property since 1980. He said it was conveyed to the appellant as a separate lot and had been on tax maps since the 1940s as a separate lot. Mr. Fox presented maps from the mapping office and aerial photographs from 1968 reflecting that Lot 1 had a dwelling on it when the appellant purchased the property. He said the dwelling fell into disrepair, but the foundation was still there.

Mr. Hammack asked if there was a building permit for the original house. Mr. Fox replied that it predated the Ordinance.

Mr. Fox stated that it appeared to him that the logical conclusion was that the County approved the subdivision creating Lot 1. He said perhaps they did not approve it by the signature of the County Surveyor, or whatever the 1943 routine was, but everything that the County had done since that time indicated that it was a subdivided lot.

Mr. Shoup stated that staff did not know if a building permit had been issued for the house.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Page 568, July 9, 2002, (Tape 1), A.W. RUDZINSKI AND CHARLOTTE JONES, A 2002-SU-003,  
continued from Page 567

Ms. Gibb moved to overrule the Zoning Administrator based on testimony and aerial photographs presented by the appellant. She said the house on the lot predated the Ordinance and through the years the lot was shown as a taxed lot.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Hart was not present for the vote.

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Page 568, July 9, 2002, (Tape 1), After Agenda Item:

Approval of January 8, 2002 and February 26, 2002 Minutes.

Mr. Pammel moved to approve the Minutes with one correction. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 568, July 9, 2002, (Tape 1), Scheduled case of:

Additional Time Request  
B.W. Management -SP 99-B-054

Mr. Pammel moved to approve the Request for Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date is December 1, 2002.

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Page 568, July 9, 2002, (Tape 1), Scheduled case of:

Approval of July 2, 2002 Resolutions.

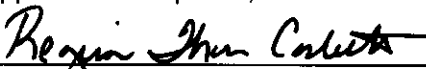
Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:27 a.m.

Minutes by: Regina Thorn Corbett

Approved on: April 22, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 16, 2002. The following Board Members were present: Chairman John DiGiulian; James Hart; James Pammel; Nancy Gibb; Paul Hammack; John Ribble; and Robert Kelley.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 509, July 16, 2002, (Tape 1), Scheduled case of:

9:00 a.m. ORSON BATTAD, VC 2002-SP-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from rear lot line. Located at 7005 Barnacle Pl. on approx. 9,277 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((5)) 219.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Orson Battad, 7005 Barnacle Place, Burke, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a sunroom addition to be located 10.9 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 14.1 feet was requested.

Mr. Battad presented the variance request as outlined in the statement of justification submitted with the application. He explained that he wanted to replace an existing deck with a sunroom. He said that the current deck was in very poor condition. He said that his contractor discovered that the deck was in violation of the Zoning Ordinance and informed him that a variance was needed to construct the sunroom. He informed the Board that they had acquired approval from the homeowner's association. He stated that the sunroom could not be located in any other area on the property.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-SP-077 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ORSON BATTAD, VC 2002-SP-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from rear lot line. Located at 7005 Barnacle Pl. on approx. 9,277 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((5)) 219. 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 16, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Although the house is located in the center of the lot it is zoned R-3 Cluster and as a result the lot is small and substandard.
3. There is no other acceptable location on the home to construct the sunroom.
4. The sunroom is only slightly larger than the existing deck, which is already attached to the house and was a part of the original construction.
5. The variance will have no impact on the surrounding properties in the neighborhood.

6. The property backs to park 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 sunroom addition shown on the plat prepared by Alexandria Surveys International, LLC, dated March 19, 2002, as revised through May 4, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 24, 2002. This date shall be deemed to be the final approval date of this variance. //

9:00 A.M. MICHAEL J. CUNNINGHAM, VC 2002-MV-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. and eave 9.4 ft. from side lot line. Located at 7609 Ridgecrest Dr. on approx. 30,537 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((7)) (5) 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. Michael Cunningham, 7609 Ridgecrest Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition for an enlargement to the kitchen and dining room areas. The addition was to be located 10.4 feet from the southern lot line and an eave to extend 9.4 feet from the same side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet with an extension of 3.0 feet for the eave; therefore, variances of 4.6 feet for the addition and 2.6 feet for the eave were requested.

Mr. Cunningham presented the variance request as outlined in the statement of justification submitted with the application. He submitted a drawing of the proposed addition and a letter of support from the neighbors. He explained that the addition was needed to provide additional living space for his family. He said that he had several architects provide him with different designs for the addition and he chose the layout that required the smallest variance. He said that he had full neighborhood support.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-MV-072 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MICHAEL J. CUNNINGHAM, VC 2002-MV-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. and eave 9.4 ft. from side lot line. Located at 7609 Ridgecrest Dr. on approx. 30,537 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((7)) (5) 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 July 16, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The variance will have no impact on the adjoining property owner because the home on that property is located 20 feet from the shared property line.
4. Unusual conditions on the property preclude any addition to the dwelling other than where the applicant has proposed.
5. The variance request is minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition as shown on the plat prepared by George M. O'Quinn, dated, November 28, 2001 as revised through April 30, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 24, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 572, July 16, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR H. COLLIER, VC 2002-MV-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.5 ft. from side lot line. Located at

8721 Old Mt. Vernon Rd. on approx. 34,848 sq. ft. of land zoned R-2. Mt. Vernon District.  
Tax Map 110-2 ((1)) 29.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Arthur Collier, 8721 Old Mt. Vernon Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested approval of a variance to permit the construction of a detached garage to be located 2.5 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance of 12.5 feet was requested.

Mr. Collier presented the variance request as outlined in the statement of justification. He submitted several photographs of the property. He stated that the proposed garage was located in such a way that he could preserve a brick walkway that extended on the side of the home. He said it was very costly to construct the walkway; therefore, he wanted to be able to keep it intact. He explained that his son and his family would be living with him in the near future and the proposed garage was needed to provide shelter for four vehicles along with adequate storage space.

Mr. Hammack stated that he would not support such a large garage. Mr. Collier stated that he was willing to remove the walkway, which would result in a variance request of 7.5 feet.

Mr. Hart asked if there was an upper level to the proposed garage. Mr. Collier answered that he was considering constructing a loft in the garage but ensured the Board that no one would be living in the garage.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer decision regarding VC 2002-MV-073 to July 30, 2002, at 9:00 a.m., to allow the applicant time to bring the garage to a smaller scale. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

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Page 573 July 16, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CRAIG L. MAXEY & KATHRYN M. RACHELS, VC 2002-MA-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 6500 Gretna Green Way on approx. 6,860 sq. ft. of land zoned PDH-8 and HC. Mason District. Tax Map 72-1 ((26)) (2) 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. Craig Maxey and Kathy Rachels, 6500 Gretna Green Way, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 6.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet; therefore, a variance of 2.0 feet was requested.

Mr. Maxey presented the variance request as outlined in the statement of justification submitted with the application. He explained that they had purchased the property with the idea of restoring the existing home. He said the addition was needed to provide adequate living space for his family. He stated that there was full neighborhood support and the homeowner's association had granted approval.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-MA-082 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

CRAIG L. MAXEY & KATHRYN M. RACHELS, VC 2002-MA-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 6500 Gretna Green Way on approx. 6,860 sq. ft. of land zoned PDH-8 and HC. Mason District. Tax Map 72-1 ((26)) (2) 17. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 16, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is tiny and irregularly shaped.
4. The dwelling is located only 6 feet from the property line and the next door neighbor is on the property line.
5. The proposed addition will be in the same location as an existing deck.
6. The variance would have no more impact on the neighbors than the existing deck.
7. There is no other acceptable location on the home to construct the addition.
8. The topography of the lot ensures that there will be no negative impact on any adjacent 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:

Page 575 July 16, 2002, (Tape 1), CRAIG L. MAXEY & KATHRYN M. RACHELS, VC 2002-MA-082, continued from Page 574

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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, shown on the plat prepared by Scott Sterl, dated January 29, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 24, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 575 July 16, 2002, (Tape 1), Scheduled case of:

9:00 A.M. GLENN AND ANN ROUNSEVELL, SP 2002-PR-026 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 8.8 ft. from side lot line. Located at 2468 Buckelew Dr. on approx. 2.30 ac. of land zoned R-3. Providence District. Tax Map 40-3 ((1)) 51.

Neither the applicants nor their representative were present for the hearing.

Mr. Hammack moved to defer SP 2002-PR-026 to July 23, 2002. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 575 July 16, 2002, (Tape 1), Scheduled case of:

9:30 A.M. RADLEY AUTOMOBILES, INC., D/B/A RADLEY ACURA, A 2002-MA-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating the vehicle sale, rental and ancillary service establishment authorized under Special Exception SE 85-M-086 in violation of certain conditions set forth in the special exception approval. Located at 5823 Columbia Pi. on approx. 1.86 ac. of land zoned C-8. Mason District. Tax Map 61-2 ((1)) 105. (admin moved from 5/14/02)

This case was administratively moved to January 7, 2003, per the applicant's request.

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Page 576 July 16, 2002, (Tape 1), Scheduled case of:

9:30 A.M. RENAISSANCE AT BRIDGES OF OAKTON, A 2002-HM-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants must clear violations indicated in a Notice of Violation dated April 2, 2002, within 15 days of receipt of the Notice. Located at 2552 Bridge Hill La. on approx. 1.73 ac. of land zoned R-E. Hunter Mill District. Tax Map 36-2 ((13)) 15.

This application was administratively moved to October 8, 2002, per the applicant's request.

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Page 576 July 16, 2002, (Tape 1), After Agenda Item:

Revisions to the Board of Zoning Appeals By-Laws

Mr. Hammack suggested that the Board meet during an executive session at a later date to discuss the matter. Mr. Hammack moved to defer the matter to July 23, 2002. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 576 July 16, 2002, (Tape 1), After Agenda Item:

Approval of July 9, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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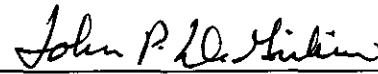
As there was no other business to come before the Board, the meeting was adjourned at 9:50 a.m.

Minutes by: Lori M. Mallam

Approved on: April 22, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 23, 2002. The following Board Members were present: Chairman DiGiulian, John Ribble, Nancy Gibb, James Kelley, Paul Hammack, James Hart, and James Pammel

Chairman DiGiulian called the meeting to order at 9:00 a.m. and discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 577 July 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LEO J. MILANOWSKI, JR. & DIANE E. RYDEL-MILANOWSKI, VC 2002-MV-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.4 ft. and eaves 25.8 ft. and 26.2 ft. from front lot line. Located at 8017 Washington Rd. on approx. 14,300 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 104 and 105.

Chairman DiGiulian called the applicants to the podium. There was no one present to represent the applicants, and Chairman DiGiulian stated he would re-call this case later in the hearing.

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Page 577 July 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOHNNY A. KITTS & CARLA J. LEAP, VC 2002-SP-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 8824 Applecross La. on approx. 8,624 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 230

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Johnny Kitts and Carla Leap, 8824 Applecross Lane, Springfield, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. She said the applicants sought approval of a variance to construct a sunroom addition to be located 18.5 feet from the rear lot line. She said the Ordinance required a minimum rear yard of 25 feet; therefore, a variance of 6.5 feet was requested.

Mr. Kitts presented the variance request as outlined in the statement of justification submitted with the application. He said they had applied for a variance to add a sunroom to their house. He said the proposed addition was scaled proportionately to the existing house and was designed to compliment the house and the entire neighborhood.

Mr. Kitts stated that they had carefully designed the addition's location so there would be no adverse impact to the neighborhood. He said the property had exceptional topographic conditions and the slope of the land prevented them from using the backyard. He said the proposed addition would allow them to utilize the backyard with no impact to the neighbors, and the strict application of the Zoning Ordinance would cause them undue hardship.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-SP-083 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHNNY A. KITTS & CARLA J. LEAP, VC 2002-SP-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 8824 Applecross La. on approx. 8,624 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 230. 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 23, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot is zoned R-3 cluster.
4. The house is sited in the rear half of the property, reducing the backyard.
5. There are topographical constraints that exist on the side of the house where the construction is to be completed.
6. The addition would not be a detriment to the adjacent properties.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the sunroom addition shown on the plat prepared by Alexandria Surveys Inc. as revised by Leroy T. Gravatte, III, dated April 30, 1998, as revised through May 15, 2002, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 579 July 23, 2002, (Tape 1) Scheduled case of:

9:00 A.M.      THANH CHAU HUYNH, SP 2002-LE-028 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 15.0 ft. from one side lot line and 14.9 ft. from other side lot line. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with VC 2002-LE-079).

9:00 A.M.      THANH CHAU HUYNH, VC 2002-LE-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.0 ft. from side lot line and 4.5 ft. high fence to remain in front yard. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with SP 2002-LE-028).

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, Agent, 2922 Wilston Place, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request and variance requests as contained in the staff report. She said the applicant sought approval of a reduction to the minimum yard requirements, based on error in building location, to permit a dwelling to remain 15 feet from the southern lot line and 14.9 feet from the northern lot line. She said a minimum side yard of 20 feet was required; therefore, modifications of 5 feet and 5.1 feet were requested.

Ms. Stanfield stated that the applicant was also seeking a variance to construct a shed 10 feet from the side lot line. She said the Zoning Ordinance required a minimum of 20 feet for the side yard; therefore, a variance of 10 feet was requested.

Mr. Hart stated that he remembered a memo from the Department of Public Works and Environmental Services (DPWES) regarding an earlier drainage problem with this property and asked if the drainage problem had been resolved. Ms. Stanfield replied that it had been resolved and she would get a copy of the memo to Mr. Hart. She said the present plat showed the drainage on the plat.

Mr. Ba Pham presented the requests as outlined in the statement of justification submitted with the applications. He said the applicant sought approval to permit a reduction to minimum yard requirements to permit a dwelling to remain 15.0 feet from one side lot line and 14.9 feet from the other. He stated that the dwelling had been there a long time, and the applicant wanted to make repairs to it. Mr. Ba Pham stated that the variance request was to allow a fence in the front yard to remain 4.5 feet in height. He said on the other side of the property, the fence was 10.0 feet in height and the applicant wanted it to remain.

Mr. Hart asked Mr. Ba Pham if the shed had been torn down that was originally been in the back of the property. Mr. Ba Pham replied that it was not yet torn down, but they would be taking it down soon.

Mr. Hart clarified that the special permit would be to rebuild the house in the same location that it had been before and Mr. Ba Pham replied that was correct.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2002-LE-028 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THANH CHAU HUYNH, SP 2002-LE-028 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 15.0 ft. from one side lot line and 14.9 ft. from other side lot line. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with VC 2002-LE-079). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 23, 2002; 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, as shown on the plat prepared by George M. O'Quinn, dated February 13, 2002, submitted with this application and is not transferable to other land.
2. The stoop located on the southern side of the dwelling shall be removed.

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 with a 7-0 vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 2002. 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 2002-LE-079 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THANH CHAU HUYNH, VC 2002-LE-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.0 ft. from side lot line and 4.5 ft. high fence to remain in front yard. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with SP 2002-LE-028). 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 23, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is narrow in width.
4. The existing shed is to be entirely removed, and the new one set further back.
5. There was no other location to place the shed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;

- D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a shed and a fence, as shown on the plat prepared by George M. O'Quinn, dated February 13, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained for the shed prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 31, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 582, July 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOSE A. MENDEZ, SP 2002-LE-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from side lot line and 2.3 ft. from rear lot line. Located at 5914 Erving St. on approx. 9,023 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (20) 8.

Chairman DiGiulian stated that SP 2002-LE-029, Jose A. Mendez, had been administratively moved to August 13, 2002.

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Page 583, July 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SALAMEH BROTHERS CONSTRUCTION CO., VC 01-V-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 55.32 ft. Located at 9111 Ox Rd. on approx. 2.74 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 29. (Moved from 2/5/02, 3/5/02 and 4/9/02) (def. From 6-4-02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Omar Salameh, 6011 N. Washington Boulevard, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicants sought permission to subdivide one lot into two lots. He said the proposed Lot 2 had a lot width less than the minimum required by the Zoning Ordinance. He said both proposed lots needed to contain 59,606 square feet, or 1.4 acres. He said Lot 2 was proposed to have a lot width of 55.32 feet and the minimum lot width required was 150 feet; therefore, a variance of 94.68 feet for the width of Lot 2 was requested.

Mr. Hart asked for clarification of the widening of Rt. 123 as shown on the plat. Mr. Bernal explained the proposed realignment of Rt. 123 and how it would affect the subject properties.

Mr. Salameh stated that he would like his engineer to do the presentation for technical reasons. Bob Hewitt, Engineer, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the subject property was located in an R-1 District, which allowed for a maximum of one dwelling unit per acre. He said that the property was two and one-half acres, and in order to utilize the entire property, it would be necessary to subdivide the land in the manner indicated on the variance plat.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 01-V-187 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SALAMEH BROTHERS CONSTRUCTION CO., VC 01-V-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 55.32 ft. Located at 9111 Ox Rd. on approx. 2.74 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 29. (Moved from 2/5/02, 3/5/02 and 4/9/02) (def. From 6-4-02). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 23, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The property is more narrow in the front than in the rear.

4. With the development conditions that are proposed, there should be substantial tree save and there will not be any significant negative impact on anyone.
5. Both the lots are in excess of the minimum lot size in the R-1 district.
6. If the road widening was taking place and the same amount of right-of-way was needed as on adjacent property, this property may meet the lot width requirement.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 29 as shown on the plat prepared by Mehmet A. Cetinbas, dated January 16, 2002, as revised through May 9, 2002. 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 provide a single driveway entrance to access both lots. The location of the entrance shall be to the satisfaction of the Virginia Department of Transportation (VDOT). If necessary, an access easement for the single access driveway between the lots shall be recorded. The Driveway shall meet the requirement of the Public Facilities Manual (PFM).
3. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for



construction, a pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. Any utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible, duly considering the cost and engineering feasibility of their installation.

This approval, contingent upon above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 31, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 585, July 23, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LEO J. MILANOWSKI, JR. & DIANE E. RYDEL-MILANOWSKI, VC 2002-MV-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.4 ft. and eaves 25.8 ft. and 26.2 ft. from front lot line. Located at 8017 Washington Rd. on approx. 14,300 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 104 and 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. Leo Milanowski, 8017 Washington Road, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. She said the applicants sought approval to construct a covered porch addition with an eave to be located 27.4 feet and 25.8 feet respectively from the front lot line and an eave for the proposed by-right construction of a garage to be located 26.2 feet from the front lot line. She said the Ordinance required a minimum front yard of 30 feet with a permitted 3 feet for eaves; therefore, variances of 2.6 feet, 1.2 feet and 0.8 feet were requested respectively.

Mr. Milanowski apologized for his tardiness and proceeded to present the variance request as outlined in the statement of justification submitted with the application. He said his family had bought a small house in 1981, which was approximately 888 square feet at that time. He said they had improved it over the years within the zoning parameters to accommodate their growing family and it now stood at about approximately 2,000 square feet. He said they would like to add a porch to the house, and they needed the variance because the front side of the porch would only allow approximately 5 feet of space, and he felt that he needed an additional 2.4 feet to be able to fully utilize the porch.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002-MV-081 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

LEO J. MILANOWSKI, JR. & DIANE E. RYDEL-MILANOWSKI, VC 2002-MV-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.4 feet and eaves 25.8 feet and 26.2 feet from front lot line. Located at 8017 Washington Rd. on approx. 14,300 sq. feet of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 104 and 105. 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 23, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The request is modest.
4. The lot is shallow.
5. The granting of the variance should pose no adverse impacts 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the sunroom addition shown on the plat prepared by Alexandria Surveys Inc. as revised by Leroy T. Gravatte, III, dated April 30, 1998, as revised through May 15, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 587 July 23, 2002, (Tape 1), Scheduled case of:

9:30 A.M. GLENN AND ANN ROUNSEVELL, SP 2002-PR-026 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 8.8 ft. from side lot line. Located at 2468 Buckelew Dr. on approx. 2.30 ac. of land zoned R-3. Providence District. Tax Map 40-3 ((1)) 51. (Def. From 7/16/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Glenn and Ann Rounsevell, 2468 Buckelew Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. She stated that the applicants sought a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure consisting of a detached garage to remain 8.8 feet from a side lot line. She said a minimum side yard of 12 feet was required; therefore, a modification of 3.4 feet was requested. Ms. Stanfield stated that a revised affidavit dated May 1, 2002, had been distributed to the Board.

Mr. Rounsevell presented the special permit request as outlined in the statement of justification submitted with the application. He stated that one corner of his garage was found to be 3.4 feet too close to the property line under the current Zoning Ordinance. He stated that when he recently applied for a permit to add an addition to their home he discovered the error.

Mr. Rounsevell stated that the garage had been permitted, inspected, and approved by Fairfax County in 1970. He said the garage had been built by a reputable, licensed contractor and the error had existed for 32 years without discovery. He said that he felt this was probably the result of a survey error regarding the actual lot location and that he was also the owner of the adjacent lot.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2002-PR-026 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GLENN AND ANN ROUNSEVELL, SP 2002-PR-026 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 8.8 ft. from side lot line. Located at 2468 Buckelew Dr. on approx. 2.30 ac. of land zoned R-3. Providence District. Tax Map 40-3 ((1)) 51. 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 23, 2002; 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:

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 detached garage, as shown on the plat prepared by Jim Rounsevell, dated March 3, 2002, as revised through April 30, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 2002. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. IL CIGNO RISTORANTE, A 2001-HM-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed on the property a tent which displays advertising signs, without Building Permit or Sign Permit approval and without obtaining Architectural Review Board approval of such permits, as required in the Historic Overlay District, all in violation of Zoning Ordinance provisions. Located at 1617 Washington Pl. on approx. 6,233 sq. ft. of land zoned PRC and HD. Hunter Mill District. Tax Map 17-2 ((31)) 1617 and B. (Admin moved from 10/23/01, 1/8/02 and 5/7/02)

Chairman DiGiulian stated that appeal application A 2001-HM-021, Il Cigno Ristorante, had been administratively moved to October 1, 2002.

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9:30 A.M. ERNEST A. AND EILEEN M. DEMARCO, A 2002-PR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a portion of land abutting appellants' property was previously dedicated for public right-of-way and, therefore, is not subject to density credit. Located at 3428 Woodburn Rd. on approx. 41,857 sq. ft. of land zoned R-1. Providence District. Tax Map 59-1 ((1)) 17 and 59-1 ((8)) (B) A. (def. from 5/7/02)

Chairman DiGiulian called appeal application A 2002-PR-002, Ernest and Eileen DeMarco.

Mr. Hart gave a disclosure but indicated that it would not affect his ability to participate in this case.

Maggie Stehman, Staff Coordinator, stated that the appeal was of a Zoning Inspector's determination that a portion of the land that abutted the appellant's property had previously been dedicated for right-of-way and was therefore, not subject to density credit. She said the land was zoned R-1 and it had approximately .96 acres.

Ms. Stehman stated that the appellants wanted to subdivide the subject property, which was larger than the adjoining lots in the subdivision. She said they had less than one acre of land and the appellants said that the dedication of Hayden Lane, the right-of-way, had never been accepted by the County. She said the appellants were seeking density credit for that area to increase the size of their lot so they could rezone to R-2 and subdivide into two lots.

Ms. Stehman stated that the Zoning Inspector had set forth in a determination in December that a density credit was not available for the portion of Hayden Lane that was abutting the subject property. She stated that one of the reasons was because in January 1947 there had been a deed between the prior owners of the lot, the Haydens and the Gaines. She said at that time the lot was configured as a portion of Hayden Lane, which was now Lot 17.

Ms. Stehman stated that the conveyance, the portion of Hayden Lane which was cross-hatched, had been sold by the Haydens to the Gaines, which was about 13,000 square feet. She said in exchange, the Gaines sold to the Haydens another 13,000 square feet, which was now Parcel J. She said it was their contention that, through this conveyance, the Haydens lost any interest in the portion of the lot that had become Hayden Lane. She said any successors of interest would have no rights to that portion of Hayden Lane. She said if those rights were given to anyone, it would be to the successors of the Gaines', since the Gaines' were the ones who owned that land as a result of the conveyance. She said the deed and the plat clearly stated that the area was to be dedicated to public road purposes. Ms. Stehman stated that the deed was erroneous and there had been a common-law acceptance of the dedication that applied. She defined common-law to be when the State effectively accepted a road and exercised domain and control over the road. She said a common-law acceptance of the dedication had allowed the State to give the road a State route number and the state's maintenance showed the road to be an accepted dedicated right-of-way.

Mr. Pammel stated that he saw the documented plat of 1947 which related to the subdivision and found that Lot 17 had not been included. He said he had difficulty in finding specifically where, on record, there had been a plat and a document that stated that this parcel of land was dedicated or that the area had been set aside for public right-of-way. He stated that by taking the position of common-law usage, the street had gone under the maintenance of VDOT. He said he questioned whether VDOT would have used the entire right-of-

way, or if they had used the 15 foot setback from the center line, which would have given a 30 foot right-of-way. He said if that was the case, it had not been consistent with the plat that had been presented by staff.

Ms. Stehman stated that the plat showed a 30 foot right-of-way. She said it had been difficult to find a specific plat that showed Hayden Lane going all the way through, but they had found a property map recorded in 1940 that reflected Hayden Lane. She said they looked at the subdivision and found it to be consistent with 30 feet and believed that the deed showed the dedication of the short section of Hayden Lane.

Lynne Strobel, Agent, stated that the appellants wanted to subdivide their one lot into two lots. She said they would like to retain ownership of one lot and build a home for their daughter on the other. She said the lot would need to be rezoned to an R-2 district. She said that the DeMarcos contemplated the subdivision when they purchased their property in 1974. She said that the surrounding lots appeared to be approximately one-half acre in size, and they had thought that the division would be in keeping with the character of the neighborhood.

Ms. Strobel stated that when the DeMarcos began to proceed with their plans, they were informed that their property was less than one acre and a rezoning to the R-2 district was not feasible as the resulting density would exceed the R-2 limitation of two dwelling units per acre. She said the issue was whether the prior dedications from the DeMarco's property to Hayden Lane was a public right-of-way. She said the document in question was the deed that was recorded in Deed Book 531, Page 3 which had been recorded in 1947 and had been signed by the seiers and buyers. She said there had been references to the streets being public streets, but neither the deed nor the plat included an acknowledgement or acceptance of the land by Fairfax County.

Ms. Stehman said that the property was subject to a common-law dedication. She said the courts did not favor common-law dedication and the County should, as a matter of policy, require a fee simple dedication. She said the dedication raised a number of questions and allowed too much ambiguity. She said it was clear that there was never any transfer, fee, interest, or compensation paid for the subject property. She stated that the DeMarcos did not own the property, but it was actually owned by the heirs of the Gaines', since the Gaines' did not convey out the property. She said she believed that the DeMarcos did not own the land by the concept of pertinent rights.

Ms. Strobel stated that she believed the best way to proceed was to have the DeMarcos dedicate the property in question in fee simple to Fairfax County. She said that would provide the County a clear fee title interest in the property and there would no longer be any ambiguity. She said as a result of the process, the DeMarcos could reserve the density credit and be allowed to subdivide their property as they had intended when they purchased it. She stated that the DeMarcos had spoken to their neighbors about the appeal, and had signed letters of support from them, which she submitted to the Board.

There was an in-depth conversation between Board members and Ms. Strobel regarding the dedication of the land by the owners, and whether the County had formally acknowledged receipt of the land.

Ms. Stehman stated in her rebuttal that even if the land had not been officially dedicated by the conveyance of Hayden Lane, that portion of the land had been severed by Lot 17. She said the Haydens and their successors had lost any rights or interest in that portion of the property.

Mr. Hammack asked Ms. Stehman when was the first statute enacted that recognized density credits. Ms. Stehman replied that she had not checked that specifically, but believed that it was at least since the 1978 Ordinance.

Mr. Pammel asked Ms. Strobel if it was possible that surveying practices and techniques, or surveyors, could arrive at different areas in surveying this lot. He asked if one surveyor could come up with a full acre and another with 9,600 square feet. Ms. Strobel replied that the DeMarcos had not had a survey done recently, and when the assessment records had been reviewed, it was assumed that the land was an acre.

Mr. Pammel stated that he would like to see something that was more precise than the current documentation, and asked if the appellants would consider having a new survey done. Ms. Strobel replied

she felt that the DeMarcos would be willing to do that. She said they did not want to move from the property, and would be willing to invest the time, effort and funds to do another survey.

Mr. Pammel asked when the last survey was done, and Ms. Strobel replied that Mr. DeMarco had a survey from 1961.

Mr. Pammel moved to defer appeal application A 2002-PR-002 to October 8, 2002, at 9:30 a.m. in order to obtain a current survey of the property.

Ms. Gibb asked Ms. Strobel if she had any case law that indicated dedication language that could or did mean an easement rather than fee simple and that she would like to see it at the next hearing.

Mr. Hammack stated that this case had come before the BZA and the applicants asked them to make a decision. He said the case had been deferred once by the Board, and said if the appellants wanted the case to be continued, then the appellants needed to make that request on record.

Ms. Strobel stated that the appellants requested a deferral to October 8, 2002.

Mr. Hart stated that he did not support the motion. He said that since the case was going to be deferred, he would like to understand where the original Lot 17 came from and also the instrument by which the other strip of Hayden Lane had been dedicated.

Mr. Pammel stated that since he raised the issue, based on the documentation he was inclined to agree with staff's position. He said there was one thing he was a little confused about, and would like some more information on that as well. He said there had been a time gap between the dedication of the Hayden Lane Parcel 17 and the subsequent recording of the subdivision that were shown as Strathmeade Springs plat, Parcels A, B, and C and wanted to know what the connection was.

The motion to defer carried by a 7-0 vote.

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Page 591 July 23, 2002, (Tape 1), Scheduled case of:

9:30 A.M. SHIRLEY M. HUNTER, TRUSTEE AND T. WILLIAM DOWDY, TRUSTEE, A 2002-MV-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a tenant to operate a service station/quick service food store/carwash without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 8101 Backlick Rd. (aka 8101 Loisdale Rd.) on approx. 34,309 sq. ft. of land zoned C-8. Mt. Vernon District. Tax Map 99-1 ((1)) 4. (Def. from 7/2/02 for notices)

Mr. Hart stated gave a disclosure, but indicated it would not affect his ability to participate in the hearing.

Chairman DiGiulian gave a disclosure but indicated it would not affect his ability to participate in the hearing.

Mr. Pammel made a disclosure that he was currently negotiating with McGuireWoods and therefore he did not think it would be appropriate for him to participate in the hearing.

Mr. Hammack gave a disclosure but felt that it did not disqualify him from participating in the hearing.

Diane Johnson-Quinn, Zoning Administration Division, stated that the appeal was of a determination that the appellants were allowing their tenant to operate a service station, quick service food store and car wash on the property without the required non-residential use permit. She said the property had a complicated history; however, it was the position of staff that the issue on appeal was quite simple. Ms. Johnson-Quinn stated that the use had been established without the required non-residential permit (NonRUP). She said that the property was before the BZA for the third time in nine months. She said the first was an appeal by the adjacent property owner, Mr. Granahan, in which he challenged the Director's approval of a waiver of the interparcel connection to his property. Ms. Quinn stated that the second time was when the tenants of the appellants, Cooper-Paige, Inc. applied for a variance of the interparcel connection requirement. She said

that in the Granahan's case, the BZA overturned the Directors waiver of the interparcel connection and also denied the variance to Cooper-Page Inc. Ms. Quinn stated that as a result, the interparcel connection was required. She said the appellant and their tenant challenged the BZA's ruling in the appeal, but that was still pending in Circuit Court and had not been set for trial. Ms. Quinn stated that in April 2002 an inspection of the property as well as a review of the County's records revealed that the Quicksilver Food Store/Service Station and Car Wash were completed, open and operating as Parkway Express and that there has been no application for issuance of a NonRUP. She said Section 18-701 of the Zoning Ordinance required that a NonRUP be issued prior to any occupancy or use of a structure and staff had no record of one being issued or applied for. Ms. Quinn stated that the service station, quick service food store, and car wash were operating.

Mr. Hart asked if the violation was just to the owners and not to the tenant. Ms. Quinn replied that they had served Notice to the owners as well as the operator of the business, and the operator chose not to appeal.

Mr. Hammack asked if the tenant had discontinued his operation. Ms. Quinn replied not to her knowledge. She said she believed they were still operating, and the County had not taken any further action at that point.

Dexter Odin, Agent, stated that the County stated that the appellants were operating on a property without a NonRUP and therefore, it was a Zoning violation. Mr. Odin stated the appellant's argument was that there was a violation by the tenant and not by the owner, and there was nothing in the statutes that said that mere ownership of property where a zoning violation occurs renders the owner liable. He said that was not the law and had never been the law. He said it stated that one must permit the violation in order to be liable which meant one must either commit the violation himself or one must permit the violation. Mr. Odin stated that language was for cases where parents or owners permitted a violation by a child, wife, or spouse, or someone else in the family, or someone who is an owner permits their agents to commit a zoning violation. He said this was a landlord and tenant. He said the Ordinance was clear that you must be an owner and you must permit the violation. Mr. Odin said therefore the question that the County did not address was if there was an allowing by the landlord owner. He said the answer was that there was no evidence of that. He said the owner of the property had gone as far as they could go to prohibit the violation and had done that in the lease. Mr. Odin stated that the lease on the subject property granted to a tenant exclusive possession of the property for twenty years with two renewals of five years each. He said during that period of time, the structure that was being occupied, and created the violation, remained the property of the tenant, not the landlord, during the entire tenancy of the lease. So as long as there was a lease, the building itself was the tenants building, not the landlords. He said the lease provided that the tenant was forbidden and precluded from violating any County Ordinances. Mr. Odin said rather than permitting, the landlord had prohibited the violation of the very Ordinance of which the landlord was accused. He said the notice that was served on the owner made no mention of the owner allowing or permitting the tenant to violate the lease. He said the County would like to argue that a landlord had the duty to enforce the Zoning Ordinance or they were otherwise liable, then the County was permitting the violation as much as any landlord. He said the County had a final adjudication that the tenant is violating the lease, and the County has taken no action to proceed to terminate the violation. He said the Ordinance was clear in the Statute of Virginia that it was the Zoning Administrator who had the duty to enforce zoning laws. He said there had been no condoning, that the tenant acted on its own. Mr. Odin stated they were waiting for a ruling by the Circuit Court which stated that this was or was not a violation by the tenant. Until the appeal was determined, he thought it would be fool-hearty to go after the tenant until there was an answer. He said there were not permitting, but simply waiting for the County, the Zoning Administrator, who by law had the duty to enforce the Ordinance, to go forward and enforce the Ordinance, or at least have a court tell them that there was a violation.

Ms. Gibb stated that the Board had previously had the issue of permission with this exact same appellant on different property. She stated that she didn't buy that by not acting, you were permitting. She said she was sympathetic to the question of waiting for an appeal.

Mr. Odin stated that permitting requires some affirmative act and the language could be in the lease and you could still permit, but it would require additional action in some way.

Mr. Hammack asked if Mr. Odin wanted to release the lease into evidence. Mr. Odin replied that he would.

Mr. Hammack asked if he had any legal authority that said the County Ordinance was overly broadly written. He said Section 18-901.2 talked about any person, whether owner, lessee, principal, etc. who violated any



provision of this Ordinance, shall be subject to the enforcement provisions. Mr. Hammack asked Mr. Odin if he had anything that said this was not a proper statement of the law.

Mr. Odin replied no, and it is who violates the Ordinance that saved it from being overbroad and overreaching.

Mr. Hammack questioned that Mr. Odin felt that issuing a lease that allows someone to come in is a permission to use the property, that or under Section 18-702.1 "or cause to be occupied or used."

Mr. Odin said that if they issued a lease that said you may occupy this whether you have an occupancy permit or not. That is an entirely different question; here the lease has affirmative prohibitions in stating you will not do that.

Mr. Hammack asked Mr. Odin if it was the appellant's position that a landlord, once having put those provisions in a lease, does not have to do anything further to enforce their lease if they find their tenant is occupying the property in violation of the Ordinance.

Mr. Odin said he was of the opinion that was correct; that the duty is on the Zoning Administrator, and this is a private prohibition.

Mr. Hart stated that he agreed with Ms. Gibb and Mr. Hammack. He said that the word permit does not necessarily require an affirmative action on the part of someone. I think passive acquiesces under certain circumstances could be permission.

Mr. Hart asked if there was an application for a Non-Rup that was denied. Ms. Johnson-Quinn replied that there was no record of any application.

Mr. Hart asked if there were inspections associated with not having a NonRUP. Ms. Johnson-Quinn stated that the building had been finaled, but there has been no Health Department inspection as yet, which normally they would bring in with an application for a NonRUP

Chairman DiGiulian called for speakers.

Greg Granahan, owner of the parcel to the south of the property came forward to speak. He stated that he had been working very hard over the last year with County representatives, the attorney and land use consultant to try to rectify the problem involving the interparcel access. The only positive note was on November 6, 2002, when the Board of Zoning Appeals ruled that the interparcel access was to be included on the neighbors' site plan. He said he just wanted to get on with developing his property.

Jane Gwinn, Zoning Administrator, stated that she thought Mr. Odin presented a convenient argument. She said that the owner and the tenants seemed to be in concert when they filed suit against the BZA, challenging the decision on the appeal on the Director's previous decision, a case that has not been set for hearing. In the interim, the tenant decided to open up without the NonRUP, but without seeking or trying to meet further the current litigation pending. Ms. Gwinn stated that with regard to the owner waiting for her to enforce on the issue of the NonRUP, after discussions with the County Attorney's staff and once the owner filed an appeal, it was staff's judgment that it was more appropriate to wait until the BZA acted on the appeal than for her to initiate litigation against the tenant. She said where the Zoning Ordinance may be a criminal statute, staff didn't prosecute Zoning Violations in the criminal court, but rather would file for an injunctive relief, and for many years, have filed against the owner and the tenant, if that's the circumstance. Ms. Gwinn said she did not believe that the appeal pending gave the tenant any right to go ahead and take another step, which was to open without a NonRUP.

Mr. Hart believed that there were several things that had been dropped out of the lease, and he questioned Mr. Odin regarding the lease. Mr. Odin's response was that he wanted to wait until the Circuit Court made its determination.

Pam Pelto, County Attorneys office, said what was pending was the Petition for Writ of Certiorari against the BZA decision and, also filed at the same time which has since been non-suited, a Petition for Writ of Mandamus requesting an order of the court for the issuance of the NonRUP; and a Bill of Complaint

requesting a declaratory judgment from the court regarding the constitutionality of the demand for the interparcel access connection in order for them to get their NonRUP.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that this was a very narrow issue. He said this is a very straightforward case. You have a tenant that doesn't have a NonRUP, and is operating. He noted that the tenant had not appealed the decision. Mr. Hammack said the issue was whether the statute as it was written in the Fairfax County Zoning Ordinance would hold the landlord responsible in some way for allowing an infraction of this nature to occur. He said he understood Mr. Odin's arguments about Common Law, but it had been modified a good deal in the past century. He said the Zoning Ordinance was not common-law in any way; it is a creation of the 20<sup>th</sup> century. Mr. Hammack said the Ordinance was clear, under Section 18-702 which prohibited any person from permitting or causing to be occupied or used, any building hereafter erected without applying for a permit. Section 18-901, General Provisions, holds any persons, whether owner, lessee, agent, employer, who violates a provision of this Ordinance and permits any such violation or fails to comply with the requirements or whoever erects any building or uses any building or land in violation of the provision to be subject to the Enforcement Branch. Mr. Hammack stated that Mr. Odin had not provided any legal authority that demonstrated the provision was invalid. He said Mr. Odin mentioned that the lease protected him from the operation. Mr. Hammack said he believe that the Board had to look at whether the Ordinance would cover the type of activity which was going on in the property. He said Mr. Odin admitted that there was no NonRUP obtained and argued that the landlord could not be held responsible. Mr. Hammack stated that a lease allowed at least some responsibility under this Ordinance. He moved that appeal application A 2002-MV-014 be upheld.

Ms. Gibb seconded the motion.

Mr. Hart supported the motion on the basis of a passive landlord was a permitting landlord.

Ms. Gibb stated she was going to support the motion. She said tenants could come and go, but it was the use of the land that the Ordinance spoke to and for that reason the owner of that land could not divorce himself from what went on the property.

The motion carried by a vote of 5-1-1. Chairman DiGiulian abstained from the vote, and Mr. Pammel voted against the motion.

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#### Approval of July 16, 2002 Resolutions

Mr. Ribble moved approve the Resolutions for July 16, 2002, which was seconded by Mr. Hammack and carried by a vote of 7-0.

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Chairman DiGiulian stated that Mr. Hammack had presented to the Board some by-laws and revisions that he, Mr. Hammack and Mr. Pammel spoke of last week. He suggested that the Board take them home to review them.

There was a brief discussion regarding the by-laws and that it had been nine years since any changes had been made.

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As there was no other business to come before the Board, the meeting was adjourned at 11:57 a.m.

Approved on: July 1, 2003

Minutes by: Judith A. Gobbi

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 30, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 597, July 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TANYA MURPHY, VC 2002-MV-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. from side lot line and 3.0 ft. from rear lot line. Located at 6019 Grove Dr. on approx. 6,864 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (3) 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. Tanya Murphy, 6019 Grove Street, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a 2-story addition to be located 4.5 feet from a side lot line and 3.0 feet from the rear lot line. The minimum side yard and rear yard requirements for the R-4 district are 10 feet and 25 feet respectively; therefore, variances of 4.9 feet for the side yard and 22.0 feet for the rear yard were requested.

Mr. Hart asked if the alley in the rear was a public alley. Mr. Bernal replied yes.

Ms. Murphy presented the variance request as outlined in the statement of justification submitted with the application. He said the property was unusual. Ms. Murphy stated that the alley was created when the Belle Haven subdivision was created with the intention of providing access to the properties from the rear. She said the addition was needed to provide more living space. Ms. Murphy stated that the proposed location was the only place for an addition. She presented letters in support from the owners of Lots 12 and 14. Ms. Murphy said the garage addition would be compatible with the existing dwelling.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MV-071 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TANYA MURPHY, VC 2002-MV-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. from side lot line and 3.0 ft. from rear lot line. Located at 6019 Grove Dr. on approx. 6,864 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (3) 13. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 2002; 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 applicant made a good presentation.
4. The placement of the house is to the rear of the property.

5. The topographical conditions preclude the addition from being placed in any other location on the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by Phillip L. Vander Myde, Architect, dated, April 12, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 2002. This date shall be deemed to be the final approval date of this variance. //

9:00 A.M. EDWARD A. & LAURA B. DIGGES, VC 2002-PR-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from side lot line and 15.0 ft. from rear lot line. Located at 7712 Virginia La. on approx. 12,859 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((7)) 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. Edward and Laura Digges, 7712 Virginia Lane, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of an accessory structure, a detached garage with an attic above, to be located 2.0 feet from a side lot line and 15.0 feet from the rear lot line. A minimum side yard of 12 feet and a minimum rear yard of 22 feet are required; therefore, variances of 10.0 feet and 7 feet were requested respectively.

Mr. Digges presented the variance request as outlined in the statement of justification submitted with the application. He said the garage would be in character with the neighborhood. Mr. Digges submitted photographs of garages in the area. He said the lot was narrow and the garage would be virtually maintenance free.

Mrs. Digges stated that they would have 3 feet for maintenance.

Mr. Hammack asked if there would be a storage area on top of the garage. Mr. Digges replied yes.

Mr. Hammack asked how far away the house was on the adjacent property. Ms. Digges replied it was 35.3 feet from the shared property line.

Mr. Hammack asked if there was a way to shift the garage to the interior of the lot. Ms. Digges stated that they would be unable to move the garage but could reduce the size of it.

Mr. Pammel asked if there would be electricity. Ms. Digges replied yes.

Mr. Pammel said a structure of that size was a lot of bulk. Ms. Digges stated that the driveway could be positioned at an angle to provide 5 feet from the side lot line.

Mr. Hart asked if the 2 feet was to the wall or if it was the overhang. Ms. Digges replied that it was the overhang.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve-in-part VC 2002-PR-084 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. & LAURA B. DIGGES, VC 2002-PR-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from side lot line and 15.0 ft. from rear lot line **(THE BZA APPROVED THE ACCESSORY STRUCTURE 5.0 FEET FROM THE SIDE LOT LINE.)** Located at 7712 Virginia La. on approx. 12,859 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((7)) 16. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property is narrow, only 75 feet wide, which impose constraints on the use of the property.
3. The height of the garage at the position requested is too close to the property. Although the applicants proposed to build a maintenance free garage, it would still require maintenance at some point in the future.
4. The structure will not change the character of the zoning district.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART** with the following limitations:

1. This variance is approved for the location of a detached garage shown on the plat (**THE BZA APPROVED THE ACCESSORY STRUCTURE 5.0 FEET FROM THE SIDE LOT LINE.**) prepared by John A. Kephart, dated September 10, 2001, as revised through May 10, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.



The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. KEMAL M. ABUL-HAWA, VC 2002-PR-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.6 ft. from rear lot line. Located at 2112 Tysons Executive Ct. on approx. 6,486 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-2 ((48)) 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. Kemal Abul-Hawa, 2112 Tysons Executive Court, Dunn Loring, 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 screen porch addition to be located 9.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 15.4 feet was requested.

Mr. Abul-Hawa presented the variance request as outlined in the statement of justification submitted with the application. He said the property was unusual with a dramatic slope. Mr. Abul-Hawa stated that the addition would be compatible with the existing dwelling. He said the homeowners association had approved the addition. Mr. Abul-Hawa requested a waiver of the 8-day waiting period.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-PR-092 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

KEMAL M. ABUL-HAWA, VC 2002-PR-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.6 ft. from rear lot line. Located at 2112 Tysons Executive Ct. on approx. 6,486 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-2 ((48)) 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 July 30, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is small with a narrow rear yard that suffers from topographical constraints.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of addition as shown on the plat prepared by L. Carl Gardner, Jr., dated, May 19, 2002, revised June 21, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 603 July 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL BRATTI, VC 2002-DR-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 13.0 ft. and chimneys 10.0 ft. and 11.0 ft. from side lot line. Located at 2025 Franklin Ave. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Bratti, 2025 Franklin Avenue, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit construction of a dwelling, to be located 13.0 feet from the north side lot line. The applicant also requested approval for three chimneys to be located 10.0 feet, 11.0 feet and 11.0 feet from the north side lot line. A minimum side yard of 15 feet is required with an extension of 3 feet for chimneys; therefore, a variance of 2.0 feet was requested for the dwelling and variances of 2.0 feet, 1.0 foot and 1.0 foot, respectively, were requested for the chimneys. Ms. Josiah noted that the staff report indicated that Variance VC 95-D-101 was granted to permit the construction of a dwelling 15.0 feet from a front lot line when in fact the BZA granted a dimension of 25 feet only.

Mr. Bratti presented the variance request as outlined in the statement of justification submitted with the application. Mr. Bratti stated that there was a problem with the topography of the lot, from the Franklin Avenue side of the lot to the Virginia Avenue side. He said the lot had a 42 foot fall in the topography. Mr. Bratti stated that the house currently on the property was very small. He said given the width of the lot at 101 feet, in order to have the bulk of the house on the main living level above grade, without having it into the hill and underneath the grade, the house almost maximized the width of the usable permissible lot minus the 15 foot setbacks from the north and the south sides. Mr. Bratti stated that he also wanted to maintain a level area of a parking and a pull out from the garage.

Mr. Hammack asked Mr. Bratti why he could not build the garage and still meet the setback requirements. Mr. Bratti replied that if he narrowed the width of the house, there would not be enough room to put all of the rooms that were needed in the house which would force the house to another floor. Mr. Bratti stated that if he were to add another floor to the house the appearance from Franklin Avenue would be such that it would be a very towering structure. He said he was trying to minimize the impact of the appearance of the house from the street and keep the house as squatty as possible. Mr. Bratti stated that he had put in over two years of study into the project to come up with the most reasonable, indistinguishable from the neighborhood style of construction design, while getting utility out of the house at the same time.

Mr. Hammack asked Mr. Bratti if he had seen all the letters in opposition. Mr. Bratti replied yes.

Mr. Hart stated that if the house were 69 feet instead of 71 feet, there would be no need for a variance.

Mr. Bratti stated that the additional 2 feet was needed in order to get 3 bedrooms and the usual living room, family room, dining room on one level.

Mr. Hart asked what was the hardship for not having a house that was 69 feet instead of 71 feet. Mr. Bratti replied that the utility of the main living space and maintaining a garage.

Mr. Hart asked why the 3 car garage could not face the street. Mr. Bratti stated that it was his opinion and his architect's opinion that it would be take away from the curb appeal of the house. He said he tried using Virginia Avenue, but the topography in the back was too steep and not wide enough for a car to turn in.

Mr. Hammack asked the applicant why the house could not have been shifted over so that a variance was not required on the north side since there would be room on the south. Mr. Bratti said that would be imposing on the setback on that side of the house.

Chairman DiGiulian called for speakers.

Donald H. Cochran, 2023 Franklin Avenue, came forward to speak in opposition. He stated that the applicant had not demonstrated or submitted supporting data that he met the nine required standards for variance. Mr. Cochran stated that applicant was seeking a special privilege or convenience to satisfy his own interest while ignoring the public interest. He said the applicant had a large lot and the topography was not especially unique in the neighborhood. Mr. Cochran stated that approval of the variance would set a dangerous precedent and could encourage rogue applicants to submit requests without merit.

Jim Mehan, President of the Franklin Area Citizens Association came forward to speak in opposition. He said the association was concerned because of the precedent of encouraging future request for new construction projects to seek variances from the setback requirements.

Mr. Bratti stated in his rebuttal that in the past 22 years there had been 15 applications in the Franklin Park area for variances so there was already precedence in place in the neighborhood.

Ms. Gibb stated that she went to view the subject property and from Virginia Avenue she could not see Mr. Cochran's house. She asked if the applicant could provide screening to mitigate the impact of the wall.

Mr. Bratti replied that there was large Acuba on the north side of the lot currently but that he had no problem adding additional trees.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that this was a difficult case. He said his initial thought was that there had been a lot of variances in the area and the variances requested, at least in the dimension closer to the lot line, were relatively slight. Mr. Hart said the length of the wall, however, that would be shifting was 70 feet with some projections from it and he struggled with, in the required standards, was whether there was a hardship or whether the hardship was somewhat self inflicted. He said it was a valid observation that the other variances in the neighborhood were for additions to homes that were already there dealing with the constraints that they were given, but this application would be starting fresh and was a fairly large lot. He said there was a topographic problem, but it was more of a front to back problem to the extent that a side lot 3-car garage was desired. Mr. Hart said he was not sure that was essential for the enjoyment of the lot. He said the desire to have a one level home of 3500 square feet was also somewhat self inflicted. Mr. Hart stated that if the house were 2 levels or had a walkout in the front with the garage in the basement perhaps, the design of the home could be accommodated within the setbacks. He said he was not persuaded that diminishing the house by 2 feet between 71 feet and 69 feet, which was one way of making it by right, or shifting it closer to the setback line on the other side or at least shifting the upstairs, and dealing with the garage at the basement level. He said either of those options would be by right.

Mr. Hart said with those observations and the context of the required standards, he was not sure that on the evidence presented, that the strict application of the Ordinance would produce undue hardship had been met. Mr. Hart moved to deny the application.

Mr. Hammack seconded the motion. He said this was a very tough and close case because it seemed like the applicant tried hard to develop a plan for a two story dwelling or a one story with a basement, however you want to characterize it, rather than one with a second floor. But because there was new construction he had the opportunity to, at least where the new construction existed, minimize the impact if not avoid it entirely. Mr. Hammack stated that 76 feet of encroachment, plus the 3 chimneys which encroach a little bit further could be avoided through redesign and it might not require shifting the whole house. He said he agreed with Mr. Hart that it was more of a convenience than a hardship.

Ms. Gibb stated that she would not support the motion because Franklin Park was a unique area and she was struck by how people had respected the uniqueness of the old subdivision. She said there were not huge homes crammed on the lots and there seemed to be attempts to accommodate the slopes and the atmosphere. Ms. Gibb stated that the applicant had spent a lot of time trying to come up with a plan. She

said a two story house would be inappropriate in the neighborhood. Ms. Gibb stated that the impact on the neighborhood, as a whole, was minimized by the plan. She said the request was modest.

Mr. Kelley stated that he would vote against the motion. He said he agreed with everything stated by Ms. Gibb. Mr. Kelley stated that the applicant stated that he had worked on the application for 4 years and he did a very good job overall and the BZA should approve the variance as it was submitted.

The motion to deny failed by a vote of 2-5. Chairman DiGiulian, Mr. Kelley, Mr. Ribble, Mr. Pammel and Ms. Gibb voted against the motion.

Ms. Gibb moved to approve VC 2002-DR-085 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL BRATTI, VC 2002-DR-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 13.0 ft. and chimneys 10.0 ft. and 11.0 ft. from side lot line. Located at 2025 Franklin Ave. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 2002; 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 suffers from severe topographical conditions which the applicant has worked hard to accommodate.
4. The impact on the neighborhood and the adjacent neighbors is minimal.
5. The requests are 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the dwelling and chimneys shown on the plat prepared by R. Bratti Assoc., Inc., dated as signed May 15, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley and Mr. Ribble seconded the motion, which carried by a vote of 5-2. Mr. Hammack and Mr. Hart voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 606 July 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ST. FRANCIS EPISCOPAL CHURCH OF GREAT FALLS, VA, SPA 82-D-087-4 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-087 previously approved for a church with child care center and nursery school to permit site modifications. Located at 9220 Georgetown Pi. on approx. 6.81 of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 8. (moved from 7/9/02)

Chairman DiGiulian noted that the SPA 82-D-087-4 was administratively moved to October 8, 2002.

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Page 606 July 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from front lot line and angle of bulk plane less than 45 degrees and to permit existing structure to remain 24.0 ft. from front lot line. Located at 6477 Lincolnia Rd. on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with SPA 75-M-060-2). (admin moved from 7/2/02 and 7/16/02 per appl. req)

Page 607 July 30, 2002, (Tape 1), TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060, and TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2, continued from Page 606

9:00 A.M. TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 75-M-060 previously approved for a place of worship to permit addition of land area, building additions and site modifications. Located at 6477 Lincolnia Rd. on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with VC 2002-MA-060). (admin moved from 7/2/02 and 7/16/02 per appl.

Chairman DiGiulian noted that VC 2002-MA-060 and SPA 75-M-060-2 were administratively moved to August 13, 2002.

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Page 607 July 30, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR H. COLLIER, VC 2002-MV-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.5 ft. from side lot line. Located at 8721 Old Mt. Vernon Rd. on approx. 34,848 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 29. (Def. Dec. from 7/16/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Arthur Collier, 8721 Old Mt. Vernon, Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Stanfield stated that the application was deferred for decision only from July 16, 2002, to allow the applicant to submit a revised variance proposal. On July 25, 2002, the applicant submitted a revised statement of justification and plat. The revised plat depicted the proposed detached garage located 10 feet from the side lot line. The previous plat showed the garage located 2.5 feet from the side lot line.

Mr. Collier presented the variance request as outlined in the revised statement of justification submitted with the application. He said the original request was based on trying to retain a brick walk alongside the property, but he resubmitted, moving the detached garage 7½ feet from the original request.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve-in-part VC 2002-MV-073 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTHUR H. COLLIER, VC 2002-MV-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.5 ft. from side lot line. **(THE BZA APPROVED THE ACCESSORY STRUCTURE 10 FEET FROM THE SIDE LOT LINE)** Located at 8721 Old Mt. Vernon Rd. on approx. 34,848 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 29. (Def. Dec. from 7/16/02) 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 30, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The new plat satisfies the concerns of the Board.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART** with the following limitations:

1. This variance is approved for the location of a detached garage, as shown on the plat prepared by William E. Ramsey, dated February 15, 2002, as revised through July 24, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The detached garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian 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 7, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 609, July 30, 2002, (Tape 1), Scheduled case of:

9:30 A.M. SANG T. KIM AND BONG Y. KIM, A 2001-MA-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a building addition which was constructed on the appellants' property violates setback and floor area ratio requirements for the C-5 District and was constructed without valid site plan approval or a valid Building Permit, all in violation of Zoning Ordinance provisions. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Def. from 5/22/01, 7/10/01, 10/23/01) (Admin. moved from 1/8/02 and 4/23/02)

Vice Chairman Ribble noted that A 2001-MA-004 had been withdrawn.

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Page 609, July 30, 2002, (Tape 1), Scheduled case of:

9:30 A.M. CLYDE W. PROFFITT, A 2001-LE-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is maintaining two dwelling units on property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 3122 Clayborne Ave. on approx. 16,816 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (5) 27. (Admin moved from 8/14/01) (Def. from 9/18/01) (Admin moved from 12/11/01 and 2/26/02) (cont'd from 5/21/02)

Clyde Proffitt, Appellant, came forward to request a deferral. He said he had experienced lots of health problems and he was unprepared to go forward with the appeal because of some new information. Mr. Proffitt stated that his attorney recommended that he seek a land use attorney. He said there was new information that the neighbor's house was the only one zoned R-5. Mr. Proffitt requested a deferral for 60 days.

William Shoup, Deputy Zoning Administrator, stated that staff objected to a deferral. His the appeal had gone on for a long time. Mr. Shoup said the information provided in the July 19, 2002, memorandum reflecting additional research and aerial photography from the National Archives, demonstrated that there was not a dwelling unit on the lot in March 1941, the key date to establish non-conforming rights. He said it appeared to be the 1946-47 timeframe before a single dwelling was built on the lot. Mr. Shoup stated that staff provided the documentation necessary to support the position that there was no nonconforming right to two dwelling units on the lot and the appellant was in violation of the Zoning Ordinance. He said staff objected to a deferral and was prepared to go forward with the appeal.

Mr. Hart moved to defer decision to October 15, 2002, at 9:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 5-2. Mr. Hammack and Mr. Pammel voted against the motion.

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Page 609, July 30, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MEHRAN HOUSHANGNEJAD, A 2002-BR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is parking a wrecker in the R-3 District which exceeds the 12,000 pound gross weight limit for wreckers that are allowed to be parked in a residential district, in violation of Zoning Ordinance provisions. Located at 5520 Hinton St. on approx. 10,856 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (11) 16. (Def. From 6/4/02)

Jack Reale, Zoning Administration Division, stated that the issue was that the appellant was parking a diesel powered commercial wrecker with a gross vehicle weight of over 12,000 pounds on an R-3 District residential property. He said Par. 16 of Sect. 10-102, allowed, as a permitted accessory use, one commercial vehicle; however, there were limitations. Mr. Reale said among those limitations were that a commercial wrecker of over 12,000 pounds was not permitted. He said in contacting the manufacturer of the specific vehicle, staff received confirmation of the gross vehicle weight for the truck and it was indicated to be 17,995 pounds. Mr. Reale said the Ordinance did not allow for a wrecker to be parked in a residential district that was 12,000 pounds or more. He said the wrecker was clearly larger weighing 17,995 pounds. Mr. Reale stated that photographs of the vehicle were contained in the staff report. He said the manufacturer's documentation of the gross vehicle weight was also contained in the staff report.

Mr. Hammack asked staff to explain the difference between gross vehicle weight and gross vehicle weight with an "R" behind it. Mr. Reale asked what Mr. Hammack was referring to.

Mr. Hammack stated that the BZA had been presented with a handout from the Department of Motor Vehicles (DMV) that had the definition of gross vehicle weight, which was the total weight of a single vehicle plus the cargo. He said the definition went on to say GVWR - Gross Vehicle Weight Rating which was the maximum gross vehicle weight specified by the manufacturer for a single vehicle plus the cargo. Mr. Hammack said he was not sure what the difference between total weight plus cargo and maximum weight plus cargo. He said staff's argument was that the wrecker exceeded gross vehicle weight, and the appellant was indicating that staff was using the wrong definition.

Mr. Reale stated that staff maintained that the Ordinance meant gross vehicle weight as was indicated by the manufacturer. He said there were standards that could be reviewed and the issue of the gross weight as indicated on the DMV records represented a weight that the applicant indicated for the registration, but was a weight that was not confirmed by DMV. Mr. Reale stated that staff found that to be unreliable and the figure given by the manufacturer seemed to be the appropriate one.

Mr. Hammack said the Certificate of Title reflected the gross vehicle weight of 10,000 pounds. He said it also showed a gross vehicle weight rating of 10,000 pounds.

William Shoup, Deputy Zoning Administrator, stated that staff had not seen the Certificate of Title.

Mr. Hammack provided staff with a copy of the Certificate of Title for review.

Mr. Shoup stated that after reviewing the documentation submitted, he said the appellant had highlighted the "H" model, although the information staff received suggested that it was an "F" model. He said either way what the document indicated was the chassis weight which was considered the empty weight of the vehicle plus the payload weight, which totaled the gross vehicle weight. Mr. Shoup the 12,000 pound limit was the empty weight plus the carrying weight.

Mr. Hammack asked where in the Ordinance could that information be found. Mr. Shoup replied that he did not think gross vehicle weight was defined. He said he thought there was a definition in the State Code.

Ms. Gibb said she was not sure why this was so important. She said the vehicle had lettering on it and it was for hire.

Mr. Reale stated that the issue of it being a commercial vehicle was accepted, but the issue of whether it had a weight of 12,000 pounds or more, which was prohibited from being parked in a residential district, was the issue. He said staff did not dispute the fact that it was a commercial vehicle with lettering with a purpose for commercial use.

Mr. Hammack said that in the letter sent by the Inspector on February 15, 2002, cited Par. 16A under Sect. 10-102, stating that a wrecker of a gross weight of 12,000 pounds or more. He said it did not state gross vehicle weight.

Mr. Shoup stated that staff had consistently added the provision regarding wreckers and they had consistently administered it as being the total weight, empty weight plus cargo weight as being the gross vehicle weight. He said it was a well accepted standard that you would take the empty weight of the vehicle plus the carrying weight as being the gross weight of the vehicle.

Mr. Hammack asked how could staff be sure that the appellant added the information on the Certificate of Title. Mr. Shoup stated that the inspector indicated that he called DMV, which stated that they did not verify the weight listed on the application. He said the applicant ran the risk if it had to be weighed.

Mr. Hammack stated that he thought the person from DMV should be present to explain their procedures if staff was going to rely on that. He said he could not accept that kind of an explanation when the Certificate of Title showed something else and DMV regulations had two different definitions that did not seem to be consistent with the definitions in the Zoning Ordinance.

Mr. Shoup stated that staff could try to obtain something in writing from DMV reflecting that. Mr. Hammack said he would like to confirm that the appellant did it and not that it was just done in general.

Mr. Houshangnejad, the appellant, stated that you cannot change the weight on the Certificate of Title because they were put in by the manufacturer. He said GVWR was a rating and not the weight of the truck.

Ms. Gibb asked if the appellant had seen the letters from the neighbors. Mr. Houshangnejad replied that he had not. Ms. Gibb said the letters were disturbing and indicated that the diesel engine was started at all hours of the night and awakened the neighbors. She said the letters also indicated that the neighbors were afraid for children walking in the neighborhood and the neighborhood did not look like a residential neighborhood with a commercial truck of that size parked in the driveway.

Ms. Gibb asked if the appellant had ever thought of parking the truck someplace else. Mr. Houshangnejad replied that he thought if it was under 12,000 pounds he could keep it. He said if he had to move the wrecker he would.

Mr. Pammel asked if the business was incorporated. Mr. Houshangnejad replied no. Mr. Pammel asked if the applicant had a business license. Mr. Houshangnejad replied yes.

Chairman DiGiulian called for speakers.

Richard Stritter, 5518 Hinton Street, came forward expressing concerns relating to safety, the size and smell of the truck, noise, and the hours the truck was in operation. He said all the neighbors objected to having the truck in the neighborhood.

Mr. Hart stated that the issue before the BZA was whether the truck was more than 12,000 pounds.

Mr. Kelley asked if staff could get an order to have the truck weighed. Mr. Shoup replied that he did not know.

Tom Adams, 5510 Hinton Street, came forward expressing concerns relating to the truck being loud and an eyesore. He said he had been a resident of the neighborhood since 1964.

Mr. Hammack stated that the BZA did not have the authority to address the issues presented by the speakers.

Mr. Shoup stated that there was a Noise Ordinance in the County, but he did not know if there were decible level limitations on vehicles parked on private property. He said it could be considered a nuisance noise, and it could be a violation, but to establish a nuisance noise, people from a couple of different households would need to go to a magistrate and swear out a warrant on the issue.

Mr. Shoup said when the Ordinance was amended to add limits on wreckers, it was intended to go after the larger wreckers that could haul larger vehicles. He said he was confident that there was some discussion to establish that the subject type of wrecker was the type that the Board of Supervisors wanted to be precluded from being parked in residential districts. Mr. Shoup said staff could do that research and provide it to the BZA.

Ms. Gibb stated that the BZA needed more information and they needed to defer the appeal. She moved to defer the appeal to September 10, 2002, at 9:30 a.m.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Approval of July 23, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. //

Page 612, July 30, 2002, (Tape 1), After Agenda Item:

Request for Reconsideration  
Salameh Brothers Construction, VC 01-V-187

The BZA did not make a motion; therefore, the Request for Reconsideration was denied.

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As there was no other business before the Board, the meeting adjourned at 11:46 a.m.

Approved June 10, 2003

Minutes by: Regina Thorn Corbett/Judy Gobbi



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 6, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb, Paul Hammack, James Hart, Robert Kelley, James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 613 August 6, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MYRNA Z. KROH, VC 2002-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. and eave 3.6 ft. from side lot line. Located at 9110 Arlington Blvd. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((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. Myrna Z. Kroh, 6162 Darleon Place, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling to be located 5.0 feet from the side lot line and an eave 3.6 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, variances of 15 feet for the dwelling and 13.4 feet for the eave were requested. Ms. Langdon informed the Board that no measurements were shown for the area covered in pavement in the front yard; therefore, it was possible that a variance for front yard coverage could be required.

Ms. Kroh presented the variance request as outlined in the statement of justification submitted with the application. She requested that Christine Leonard, Architect, be allowed to participate in the hearing. Ms. Kroh explained that she needed a variance in order to construct a small cottage with a side-loading garage. Ms. Leonard submitted an elevation of the home.

Mr. Hammack asked the applicant what the plans were for the pavement in the front yard. Ms. Kroh replied that she would abide by the Zoning Ordinance with regard to any paving in the front yard.

Mr. Hart asked the applicant if it was possible to shift the home 2.0 feet to the left and still have room for the garage. Ms. Leonard replied that the applicant was agreeable to that request.

Mr. Hammack asked if the applicant was willing to shift the home 5.0 feet to the left. Ms. Kroh replied that she was also agreeable to that request.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve-in-part VC 2002-PR-087 for the dwelling 10 feet and eave 8.6 feet from the side lot line and for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MYRNA Z. KROH, VC 2002-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. and eave 3.6 ft. **(THE BZA APPROVED THE DWELLING 10 FEET AND EAVE 8.6 FEET)** from side lot line. Located at 9110 Arlington Blvd. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((4)) 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 August 6, 2002; 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 the granting of a variance.
3. The width of the property is only 100 feet and the configuration of the house justifies at least a minimal variance.
4. The variance would not alter the character of the zoning district or the neighborhood because the location of the houses on the adjoining lots are well removed from the house in question.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 dwelling (**THE BZA APPROVED THE DWELLING 10 FEET AND EAVE 8.6 FEET FROM THE SIDE LOT LINE**) as shown on the plat prepared by Kenneth W. White, dated January 10, 2001 and revised by Rebecca L.G. Bostick, stamp dated, May 30, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. Prior to approval of a building permit, the applicant shall demonstrate that the driveway/vehicle parking area is in compliance with Par. 8 of Sect. 11-102 of the Zoning Ordinance.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 August 14, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 615, August 6, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ISAKU AND YUKO HIGA, VC 2002-DR-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3 inches and wall 1 ft. 3 in. from side lot line. Located at 6324 Georgetown Pi. on approx. 23,696 sq. ft. of land zoned R-1 and HD. Dranesville District. Tax Map 22-3 ((1)) 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. Isaku Higa, 6324 Georgetown Pike, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of an addition connecting the dwelling to the chapel to be located 3.0 inches from the side lot line. The proposed addition included the construction of a privacy wall and a covered porch to be located 1.0 foot and 3.0 inches from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, variances of 19 feet 0.9 inches and 18 feet 0.9 inches were requested respectively.

Michael Marshall, agent for the applicants, presented the variance request as outlined in the statement of justification submitted with the application. He explained that the existing structures on the site were nonconforming. He stated that the new addition comprised of a new kitchen, dining room, living room, den and entrance would combine the two existing structures into one residential unit. He said the Architectural Review Board had approved the conceptual design and part of their approval was to obtain a variance. Mr. Marshall submitted a model of the proposed dwelling.

Mr. Higa explained that a fire had damaged the existing structures and the proposed construction would repair the damage.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-DR-086 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

ISAKU AND YUKO HIGA, VC 2002-DR-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3 inches and wall 1 ft. 3 in. from side lot line. Located at 6324 Georgetown Pi. on approx. 23,696 sq. ft. of land zoned R-1 and HD. Dranesville District. Tax Map 22-3 ((1)) 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 August 6, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The building structures, as they currently exist, are already in non-compliance with the requirements of the Ordinance and what the applicants propose to do is to extend an addition to connect the existing buildings; therefore, they are not increasing the extent of the nonconformity.
4. The lot is of irregular size and shape, which complies with the standards for the granting of a variance.
5. The application was approved by the Historic District Architectural Review Board.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the additions shown on the plat prepared by Michael Marshall Architecture, dated March 21, 2002, as revised through May 20, 2002, and as signed May 23, 2002, submitted with this application and is not transferable to other land.



2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 617, August 6, 2002, (Tape 1), Scheduled case of:

9:00 A.M. POPLAR HEIGHTS RECREATION ASSOCIATION, INCORPORATED, SP 2002-PR-031 Appl. under Sect(s). 3-403 of the Zoning Ordinance for a previously approved community swimming and tennis club to permit site modifications. Located at 2463 Buckelew Dr. on approx. 10.1 ac. of land zoned R-4. Providence District. Tax Map 40-3 ((1)) 53.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah Hall, Blankingship & Keith, 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Mr. Hart made a disclosure that would not affect his participation in the hearing.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicants requested approval to permit the installation of lighting on the tennis courts. The site had been the subject of a special permit that was granted by the BZA since 1954. She stated that the applicant would submit revised development conditions and staff had no objections to them. Staff was in support of the application.

Mr. Hart asked staff what time of day the phrase "all noise to be contained on site" referred to in Development Condition #10. He also asked if "all noise" was a phrase that had been used in other development conditions. Ms. Josiah explained that the condition was standard and was taken from a similar application and was meant for evening meetings and parties. She stated that the applicants needed to comply with the noise Ordinance.

Mr. Hart suggested that incorporating the verbiage "including, without limitations, fences or sheds", in the third paragraph of Development Condition #12.

Ms. Hall presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the request was only to add lights to the existing tennis courts. She said there was no opposition to the request. She submitted revised development conditions.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-PR-031 with the applicant's revised development conditions, the Board's changes to the development conditions, and for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

POPLAR HEIGHTS RECREATION ASSOCIATION, INCORPORATED, SP 2002-PR-031 Appl. under Sect(s). 3-403 of the Zoning Ordinance for a previously approved community swimming and tennis club to permit site modifications. Located at 2463 Buckelew Dr. on approx. 10.1 ac. of land zoned R-4 Providence District. Tax Map 40-3 ((1)) 53. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a special permit.
3. The club has been a good neighbor for almost 50 years.
4. The development conditions will mitigate any impact from the proposed lighting.
5. The lights will not have a negative impact on the adjacent properties.

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, 2463 Buckelew Drive (10.1 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, Incorporated dated May 23, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Lighting of the tennis courts shall be in accordance with the following:

The combined height of the light standards and fixtures for the tennis courts shall not exceed 20 feet and shall be full cut-off lights.

The lights shall be of a design which focuses the light directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.

There shall be no up-lighting of any of the proposed or existing buildings.

6. Existing lighting may remain as is; however, in the event existing lighting is replaced, the replacement lighting must be in conformance with Condition No. 5 except that the combined height of the standards and fixtures may not exceed 12 feet and security lights may be set with timers.
7. The barrier requirements along the southern, eastern and western lot lines shall be waived.
8. The existing vegetation shall be preserved and maintained and shall be deemed to satisfy the Transitional Screening requirements along the southern, eastern and western lot lines.
9. A sign permit shall be obtained and any signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
10. Parking spaces shall be provided as shown on the plat. Accessible parking shall be provided in accordance with Article 11 of the Zoning Ordinance, as determined by DPWES. All parking shall be on site.
11. Hours of operation of the pool shall be limited to 11:00 a.m. to 9:00 p.m., daily. However, swim team practice shall be permitted starting at 7:00 a.m., daily and an adult only slap swim shall be permitted to start at 6:00 a.m., daily. Evening meetings may extend beyond 9:00 p.m. provided the applicant complies with the Noise Ordinance.
12. The number of tennis courts on the site shall not exceed four (4).
13. The floodplain shown on the plat shall be classified as an Environmental Quality Corridor (EQC). The area within the EQC shall remain as undisturbed open space and the construction of any structures, including, without limitation, fences and sheds, within the EQC shall be prohibited provided, however, the stone retaining wall and wooden footbridge currently existing in the EQC may be repaired and, if necessary, replaced. The area within the EQC shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass.

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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 2002. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. MALCOLM M. MITCHELL, JR. AND LURA T. MITCHELL, VC 2002-MV-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 21.5 ft. from front lot line and 7.0 ft. from side lot line. Located at 2209 Belle Haven Rd. on approx. 11,152 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 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. Malcolm M. Mitchell, Jr., 2209 Belle Haven Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of a covered porch to be located 21.5 feet from the front lot line and a covered stoop to be located 7.0 feet from the side lot line. The Zoning Ordinance requires a minimum front yard of 30 feet and a minimum side yard of 10 feet. Therefore; variances of 8.5 feet for the porch and 3.0 feet for the stoop were requested.

Mr. Mitchell presented the variance request as contained in the statement of justification submitted with the application. He said the house was built in 1948 and was located 25 feet from the front boundary line. He explained that the covered stoop and the covered porch were needed to provide shelter from the elements while entering and exiting the home.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MV-091 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MALCOLM M. MITCHELL, JR. AND LURA T. MITCHELL, VC 2002-MV-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 21.5 ft. from front lot line and 7.0 ft. from side lot line. Located at 2209 Belle Haven Rd. on approx. 11,152 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 8. 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 6, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The stairs were already existing and the applicants just want to cover them.
4. The lot is narrow.
5. There are architectural reasons for having the addition and the house the way they are.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 porch addition and a covered stoop addition, as shown on the plat prepared by Lucille Pastear Adams, dated May 14, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 621 August 6, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES MERLIN, VC 2002-SU-088 Appl. under Sect(s): 18-401 of the Zoning Ordinance to permit construction of addition 4.8 ft. from side lot line such that side yards total 15.0 ft. Located at 3116 Franklins Way on approx. 11,132 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((12)) 69.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Merlin, 3116 Franklins Way, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a two-story addition to be located 4.9 feet from a side lot line such that side yards total 15 feet. The Zoning Ordinance requires a minimum side yard of 8.0 feet and minimum total side yards of 24 feet for PDH-2 development; therefore, variances of 3.2 feet for the side yard and 9.0 feet for the total side yards were requested.

Mr. Merlin presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot was very narrow compared to others in the neighborhood and the narrowness limited the ability to expand the home except by positioning any addition to the very front of the existing home. He said the adjacent parcel to the side of the addition was a vacant lot which contained a dry storm water management facility. He said the addition was needed to provide additional living space for his family.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002-SU-088 for the reason stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES MERLIN, VC 2002-SU-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.8 ft. from side lot line such that side yards total 15.0 ft. Located at 3116 Franklins Way on approx. 11,132 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((12)) 69. 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 6, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The statement of justification and the applicant's testimony indicated compliance with the required standards for the granting of a variance.
3. The lot is narrow and shallow compared to the other lots that are on the same side of the street on Franklins Way.
4. The addition will not have an impact on any neighbor because the side of the encroachment is facing a storm water detention 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, shown on the plat prepared by Javier A. Arencibia, dated May 28, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 623 August 6, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MOHAMMAD HUMAYN SULTANY, SP 2002-LE-030 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6518 Delia Dr. on approx. 5,661 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((8)) 42.

This case was administratively moved to September 17, 2002, at 9:00 a.m.

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Page 624 August 6, 2002, (Tape 1), Scheduled case of:

9:30 A.M. BX AUTO CENTER, LLC, A 2001-MA-036, A 2001-MA-037, A 2001-MA-038, A 2001-MA-039, A 2001-MA-040 Appls. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing tenants to operate Vehicle Light and/or Major Service Establishments without Special Exception approval and without valid Non-Residential Use Permits, as well as junk yards/storage yards, all in violation of Zoning Ordinance provisions. Located at 5723-C, 5723-D, 5723-E and 5723-F Center La. on approx. 44,544 sq. ft. of land zoned C-8, SC, HC and CRD. Mason District. Tax Map 61-2 ((20)) 10. (Admin. moved from 2/5/02 and 6/18/02) (Def from 4/16/02)

Margaret E. Stehman, Staff Coordinator, Zoning Administration Division, provided the Board with a brief synopsis of what had taken place since the last hearing on April 16, 2002. She explained that one tenant had left voluntarily, one tenant had been evicted, and an eviction was pending for another tenant who occupied two different spaces. She said Notices of Termination had been issued for two of the other five spaces. She said the appellant continued to make efforts to lease the spaces to permitted uses in the district. Ms. Stehman explained that Jim Ciampini, Zoning Inspector, had inspected the area on August 5, 2002, and discovered that Unit E which was the space where the eviction had taken place on July 26, 2002, was fully occupied. She stated that staff was disappointed in the length of time that it was taking to resolve the appeals and felt that progress had been relatively slow, although there had been something of a good faith effort. She said the two Notices of Termination dated for October and November of 2002, were too far out. She indicated that staff was reluctant to support any further deferrals.

Marc Busman, agent for appellant, explained that the appellant was not aware that a tenant had moved back into 5723E and assured the Board that the area would be padlocked as soon as possible. He recognized that the October and November 2002, dates of termination were longer than the County preferred. He said the two tenants were cooperative with everything that had been asked of them and they requested additional time to be able to relocate their businesses. Mr. Busman stated that the appellant was willing to withdraw the appeals for 5723 E and 5723C. He requested a deferral for 5723D and 5723F until October or November and at that time the appellant would also withdraw those appeals.

Mr. Pammel asked that the appellant confirm in writing that 5723E had been vacated and padlocked. Mr. Busman assured the Board that would be done. He reiterated that should the deferral be approved to a later date the appellant would withdraw the remaining two appeals at that time.

Chairman DiGiulian called for speakers.

Mark O'Johnson, President, Sunset Manor Civic Association, came forward to speak. He stated that the violations had gone on for years.

Ms. Stehman stated that staff was agreeable to the appellant's proposal since they agreed to withdraw the remaining two appeals.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to defer A 2002-MA-038 and A 2002-MA-040 until December 3, 2002, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 624 August 6, 2002, (Tape 1), After Agenda Item:

Approval of March 5, 2002, March 19, 2002 and April 9, 2002 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 625 August 6, 2002, (Tape 1), After Agenda Item:

Request for Additional Time  
Young Saeng Korean Presbyterian Church Trustees, SPA 80-S-070

Mr. Hart moved to approve the additional time request. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date is December 9, 2004.

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Page 625 August 6, 2002, (Tape 1), After Agenda Item:

Request for Additional Time  
Church Diocese of Newton for the Melkites in the United States of America, Inc., SPA 80-D-069-2

Mr. Hammack moved to approve the additional time request. Mr. Pammel seconded the motion, which carried by a vote of 7-0. The new expiration date is June 15, 2003.

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Page 625 August 6, 2002, (Tape 1), After Agenda Item:

Request for Additional Time  
Korean Central Presbyterian Church, SPA 83-P-057-3

Susan Langdon, Chief, Special Permit and Variance Branch, stated that there were speakers. She stated that staff supported the additional time request because the applicant had started on the construction. She stated that the applicant was actively working with DPWES to complete the construction process.

Karen Hunt, 2431 Villanova Drive, came forward to speak in opposition of the request. She stated that the citizens had just learned about the additional time request. She said drainage problems continued to be a problem for the adjacent homes. Ms. Hunt presented a history of communication problems between the church and the citizens. She requested that the Board either deny the request for additional time or grant a 6-month extension as opposed to a period of 12 months.

Mr. Kelley asked what would happen if the BZA denied the request for additional time.

Ms. Langdon answered that a denial would revert everything to what was approved under SPA 83-P-057-2, which provided a small amount of parking south of Amanda Place and no storm water detention facility as approved under that special permit. She informed the Board that the parking area had already been cleared and construction on the storm water detention pond had already begun.

Mr. Hammack asked staff for an approximate time needed to construct the storm water detention pond. Ms. Langdon stated that Mr. Mereness, agent for the applicants, was present and he would better be able to answer the question.

Mr. Mereness answered that the pond needed to be redesigned and moved back in close proximity to where it was shown on the plat, resubmit it, and reapply for the site permit. He said a period of 12 months would be sufficient.

Mr. Hart stated that he was concerned about existing parking problems and he asked staff if Zoning Enforcement had visited the site for a follow up inspection. Ms. Langdon replied that she was not aware if Zoning Enforcement had been back to the site. She explained that part of the approval for SPA 83-P-057-3 was for an additional parking lot that still needed to be completed. She said staff wanted the applicant to finish the parking lot and then it would be seen whether or not it helped the parking problem.

Mr. Hart asked when the applicants would be held accountable for violating the Zoning Ordinance by continuing to have offsite parking. Ms. Langdon stated that the conditions reflected there was to be no parking on Amanda Place and Zoning Enforcement could visit the site and document what the problem was and issue violations if necessary.

Page 626 August 6, 2002, (Tape 1), After Agenda Items, continued from Page 625

Mr. Pammel asked Mr. Mereness what the status was regarding the property in Centerville that the Church had recently purchased. Mr. Mereness replied that he had no information pertaining to that property.

The Board discussed whether to deny the request for an extension or defer decision for a period of time.

Ms. Gibb moved to defer the decision to October 8, 2002, to allow Zoning Enforcement to conduct an investigation regarding the alleged parking violations. Mr. Hart seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion.

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Page 626 August 6, 2002, (Tape 1), After Agenda Item:

Request for Additional Time  
The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, VA  
And His Successors in Office, SPA 80-C-096-4

Mr. Pammel moved to approve the additional time request. Mr. Ribble seconded the motion, which carried by a vote of 7-0. The new expiration date is December 6, 2002.

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Page 626 August 6, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Jacquie B. Shonk, VC 00-D-016

Mr. Pammel moved to approve the additional time request. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date is May 24, 2005.

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Page 626 August 6, 2002, (Tape 1), After Agenda Item:

Request for Reconsideration  
Michael Bratti, VC 2002-DR-085

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that there were citizens present to speak to the Request for Reconsideration.

Chairman DiGiulian called for speakers.

Donald Cochran, 2023 Franklin Avenue, came forward to speak. He stated that the variance request was unique to the community and it did not set a good precedent. He said the applicant had turned down numerous suggestions for different ways to construct the home without requiring a variance. He stated that the existing home did not encroach; therefore, the site plan submitted by the applicant was misleading. Mr. Cochran contended that there was a second floor to the structure that was not revealed to the Board during the hearing.

Michael Bratti came forward to speak. He submitted an elevation of the side of the proposed home, which he stated did not reflect a second floor. He stated that the main living floor was what would appear to be a second floor and the ground floor was totally underground and was to consist of the basement and garage with stairs leading to the main floor. He said the variance would not set a precedent, as there were nine other variances in the area for the side yard requirements.

Mr. Kelley stated that no new information had been presented that would make him consider approving the Request for Reconsideration. He said Ms. Gibb made an excellent motion at the July 30, 2002, public hearing.

There was no motion, and, therefore, the Request for Reconsideration was denied. //

Page 027 August 6, 2002, (Tape 1), After Agenda Item:

Approval of July 30, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:37 a.m.

Minutes by: Lori M. Mallam

Approved on: April 29, 2003

Regina Thorn Corbett

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 13, 2002. The following Board Members were present: John DiGiulian; Nancy Gibb; James Hart; James Pammel; Paul Hammack; John Ribble; and Robert Kelley.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 629 August 13, 2002, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT S. & MARTHA GEORGE, VCA 98-H-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from side lot line and accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 1636 Irvin St. on approx. 27,992 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((10)) 42.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Jenkins, Agent, 2071 Chain Bridge Road, Suite 400, Vienna Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought an amendment to a variance to permit construction of a garage addition to the dwelling to be located 6.8 feet from the south side lot line. She said the Ordinance required a minimum side yard of 20 feet.; therefore, a variance of 13.2 feet was requested.

Ms. Josiah stated that the applicant also sought approval to allow a gazebo to remain in the front yard of a lot containing 36,000 square feet or less. She said the Ordinance did not allow accessory structures in the front yard of a lot containing 36,000 square feet or less.

Mark Jenkins, Agent, presented the variance amendment request as outlined in the statement of justification submitted with the application. He stated that the request for the garage was actually a request to enclose an existing carport. He said the property was approximately 27,000 square feet in size and had been platted in 1958. He said the current owners had been in the process of upgrading the home which was originally constructed in 1958. He said they had completed most of the upgrades with an addition to the rear of the house and other improvements. He said they wanted to enclose the existing carport which had been built a long time ago.

Mr. Jenkins stated that three similar variances had been granted for sideyard setbacks in the area. He said it would be logical to allow the carport to be enclosed in a manner that would be architecturally compatible with the home. He said he had submitted seven letters of support to the Board from neighbors who owned abutting lots and those directly across the street.

Mr. Jenkins stated that the gazebo was in the back yard, from a functional sense, because there was an ingress/egress easement along the northern boundary line which necessitated the variance. He said the gazebo was far off from the property lines and there was substantial mature vegetation that screened it from the neighbors.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VCA 98-H-117 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT S. & MARTHA GEORGE, VCA 98-H-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from side lot line and accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 1636 Irvin St. on approx. 27,992 sq. ft. of land zoned R-1.

Hunter Mill District. Tax Map 28-4 ((10)) 42. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 13, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The house is sited on the southern boundary of the property, with mature vegetation on the north side.
3. The lot has an unusual shape.
4. The carport is already existing and is connected through the peaked roof.
5. The enclosed carport would be architecturally attractive.
6. The neighbors have submitted letters of support of the application.
7. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition and gazebo shown on the plat prepared by Harold A. Logan Associates, PC, dated February 20, 2002, as revised through May 28, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble and Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Susan Langdon, Chief Special Permit and Variance Branch, suggested that since the Board would be recessed until September all the cases should have the 8-day waiting period waived.

Mr. Kelley moved to waive the 8-day waiting period for all of the approved cases. The motion was seconded by Mr. Ribble and Mr. Pammel and carried by a 7-0 vote.

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Page 631, August 13, 2002, (Tape 1), Scheduled case of:

9:00 A.M. FRANK W. CORLEY, SP 2002-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. from side lot line. Located at 8430 Blakiston La. on approx. 13,958 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((11)) (3) 9A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank W. Corley, 8430 Blakiston Lane, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought the approval of a special permit for a reduction in the minimum yard requirements based on an error in building location to permit a partial enclosure of a carport to remain 7 feet from the side lot line. She said the Ordinance required a minimum 12 foot side yard; therefore, a modification of 5 feet was requested.

Mr. Corley stated that he wanted to clarify a single issue before the Board. He said the real issue before the Board was not an error in location, but the conflict that a carport could not have an enclosure higher than 18 inches in height. He said he believed that it was common sense and a legal requirement for a safety barrier to be installed. He said the single issue before the Board, had been the replacement of an existing safety railing, at the rear of a previously legal carport which technically transformed that structure into an illegal one, built in error, 5 feet too close to the lot line.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2002-MV-035 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK W. CORLEY, SP 2002-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. from side lot line. Located at 8430 Blakiston La. on approx. 13,958 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((11)) (3) 9A. 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 13, 2002; 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:



Page 633 August 13, 2002, (Tape 1), FRANK W. CORLEY, SP 2002-MV-035, continued from Page 632

1. This Special Permit is approved for the location of a partially enclosed carport shown on the plat prepared by Alexandria Surveys International, LLC, dated February 27, 2002 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 7-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble and Mr. Pammel seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 633 August 13, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from front lot line and angle of bulk plane less than 45 degrees and to permit existing structure to remain 24.0 ft. and 23.0 ft. from front lot line. Located at 6477 Lincolnia Rd on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with SPA 75-M-060-2). (admin moved from 7/2/02, 7/16/02 and 7/30/02 per appl. req)

9:00 A.M. TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 75-M-060 previously approved for a place of worship to permit addition of land area, building additions and site modifications. Located at 6477 Lincolnia Rd. on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with VC 2002-MA-060). (admin moved from 7/2/02 7/16/02 and 7/30/02 per appl. req)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mr. Hart gave a disclosure that he had one case with an attorney from the Manassas office of Ms. Strobel's firm. He said he did not think that would affect his ability to participate in this case.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval of a variance to permit the construction of an addition 13 feet from the front lot line, with an angle of bulk plane less than 45 degrees, to permit an existing detached dwelling to remain 24 feet from the front lot line, and to permit the church to remain 23 feet from the front lot line. She said the Ordinance required a minimum front yard of 45 degree angle of bulk plane, but not less than 35 feet; therefore, variances of 22 feet and 27 degrees were requested for the proposed addition, and variances of 11 feet and 12 feet were requested for the dwelling and church respectively.

Ms. Josiah stated that the applicant also sought to amend SP 75-M-060, previously approved for a place of worship, to permit the addition of land area, building additions, and site modifications. She said specifically the applicant proposed to construct a 17,400 square foot addition to the existing church, to add 3.31 acres of land area, including the 21,889 square feet approved under the SE for the outside parking lot, and to construct 45 additional parking spaces.

Ms. Josiah stated that the site had been the subject of special permits and a variance by the BZA since 1975. She said several issues remained unresolved, including overall building mass, specifically new construction that required a variance; minimal buffering between the proposed church and the adjacent residential uses; and historic parking deficiencies. She said that staff encouraged the provision of parking on site; however, staff recommended that the applicant consider demolition of the dwelling on the property in

order to provide additional parking. She said the staff also recommended the retention of the existing parking, which was proposed to be eliminated by the construction of the addition to the church.

Ms. Josiah stated that the church had historically parked 50 to 100 cars at the adjacent shopping plaza for activities such as funerals and weddings, in addition to Sunday services. She said staff believed that the church should provide a commensurate amount of parking on site.

Ms. Josiah stated that staff concluded that the subject application was not in harmony with the Comprehensive Plan and not in conformance with the applicable Zoning Ordinance provisions for the aforementioned reasons, and as outlined in the staff report. She said staff recommended denial SPA 75-M-060-2 and VC 2002-MA-060.

Lynne Strobel stated that the applicant was the owner of 3.31 acres and an additional acre at the intersection of Old Columbia Road and Lincolnia Road. She said the applicant had filed two applications to be processed concurrently to permit an addition to an existing place of worship, the addition of a parking lot, and to allow the existing and proposed additions within a required front yard.

Ms. Strobel stated that the Mt. Pleasant Baptist Church was established in the late 1860's and there had been a church in that location since that time. She said that was long before the requirements for parking and requirements for special permits. She said it was a time when people walked to church and spent most of their Sundays at church. She said the oldest structure currently existing on the property was constructed in 1931 with subsequent additions constructed in 1950 and 1977.

Ms. Strobel said that Fairfax County had changed significantly in that time and cars had become the primary mode of transportation. She said the church acquired an additional parcel on the opposite side of Old Columbia Road and constructed a parking lot in 1995 in accordance with County approvals. She said the existing improvements on the property consisted of a sanctuary with a seating capacity of 320 seats, and accessory uses including religious education classes, administrative offices, and other uses typically associated with a religious facility. She said the applicant proposed the construction of the improvements on this property in three phases.

Ms. Strobel stated that the first phase was the proposed on-site parking site. She said according to the plat it had been proposed to accommodate 61 spaces. She said that the combination of the 61 spaces and the 31 off-site spaces would bring the total to 95 spaces for the church use, which exceeded the Ordinance requirement, and the applicant actually met the requirement for on-site parking.

Ms. Strobel stated that the other two additional phases were proposed to the existing building. She said that the additions would increase the size of the lobby area and also provide an opportunity for a better space for religious education classes. She said currently the applicant utilized their basement for those purposes, the space was not well laid out, was crowded, and was difficult for elderly and handicapped members to access; that was the purpose of the proposed improvement.

Ms. Strobel stated that the church did not intend to increase its membership, but just to serve the existing membership. She said the total completed floor area ratio (FAR) would be 0.13 when the improvements were finished, which was substantially less than the 0.2 FAR that was permitted in the R-2 District.

Ms. Strobel stated that in addition to the special permit amendment, the applicant requested a variance to allow the existing church and residential dwelling to remain in its existing location. She stated that the applicant also requested a variance for a proposed addition. She said the variance was required because the applicant had provided dedicated right-of-way along Lincolnia Road.

Ms. Strobel stated that the Fairfax County Planning Staff suggested that it would not support a variance for an additional structure, but the proposed addition would not encroach any closer to Lincolnia Road than the current structure.

Ms. Strobel stated that the proposed addition would not create any problems with sight distance, and there would not be any adverse visual impact associated with the proposed variance.

Page ~~035~~ August 13, 2002, (Tape 1), TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060, and TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2, continued from Page ~~034~~

Ms. Strobel stated that the applicant met the standards for a variance as outlined in the letter that was submitted with the application. She said that the property was unique, it had been a church since the 1860's, and the most recent building on the site dated back to 1931. Ms. Strobel said the property was narrow in the portion on which an addition could be located. She said a large portion of the property was used as a cemetery dating back to the 1700's and that area could not be disturbed. The irregular side of the property, the existence of the cemetery and the longstanding existence of the church were all unique conditions that warranted granting of the variance.

Ms. Strobel stated that the applicant had been working with the community to try to address their concerns and came up with some proposed additional development conditions which were distributed to the Board.

Ms. Strobel stated that they would like to meet again with the the neighbors to address other areas of concern. She asked that a decision on the hearing be deferred until September.

Mr. Hart asked why the retail parking lot in the shopping center across the street could no longer be used by the applicant. Ms. Strobel replied that new management and new stores were bringing more business to the shopping area; therefore, the owners did not want to tie up their parking.

Mr. Pammel stated that he felt over the past few years, churches were not adhering to the parking restrictions that were in the development conditions. He stated that he wanted a definitive number of cars per seat ratio provided to him by Ms. Strobel at the next hearing.

Susan Langdon, Chief, Special Permit and Variance Branch, explained why the parking had become an issue. She said the main reason staff included that all parking shall be on site was because the uses were special permit uses, and not allowed by-right on properties where they were located. She said staff believed that everything for the use should be contained on site so that no problems were caused to the surrounding neighborhoods and uses.

Ms. Langdon stated that if the Board felt that was not applicable, it could delete that part of the condition. She said that secondly, she would research what the parking requirements were for other churches. She said consistently over the past few years, staff's analysis reflected the need of one space per 2.6 seats. Ms. Langdon said staff would do further research.

Mr. Pammel stated that if that was the case, then there needed to be an amendment to the Zoning Ordinance quickly.

Mr. Kelley stated that he felt that the revised proposed development condition number one was not an issue for the Board to decide. In response, Ms. Strobel stated that it would probably be best to have a private agreement between the church and the neighborhood. She said it had been addressed because it was high on the neighborhood's priority list.

Ms. Langdon stated that staff did not support the development condition. She said there could be a parking problem on site due to weddings or funerals and the church needed all the existing spaces on a regular basis.

Mr. Kelley asked Ms. Strobel to provide the average number of funerals, weddings or special events the church had each year and she replied that she would.

Chairman DiGiulian called for speakers.

Sara Raglan, (no address given), came forward to speak in support of the church. She stated that she knew that parking had been a problem for the church over recent years, as she had been a member of the church for 50 years. She hoped the Board would work with the church on the parking issue.

Robert Haymen, (no address given), Managing Agent for Lake Barcroft Shopping Center Associates, came forward to speak in support of the church. He said he had managed the retail property since 1987 and was

Page 630 August 13, 2002, (Tape 1), TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060, and TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2, continued from Page 635

apprehensive about the intensification of the church use. He said on one occasion last year every parking spot for his stores had been filled as a result of church use.

Mr. Haymen briefly explained how the use of the parking lot had changed with management changes. Secondly, he said that the church also needed traffic management. He said the church had agreed to provide individuals to help traffic flow through the nearby busy intersection safely.

Jim Kitchen, (no address given), a Member of the Barcroft Square Homeowners Association said his property abutted the church property. He said he came forward to speak in support of a deferral based on the need to continue mediation.

Lauren Grossman, (no address given), came forward to speak in opposition to the church. She said she could see from her backyard the parking that was taking place and that impacted her quality of life. She said she heard cars, people talking, exhaust fumes, etc. She said this would be amplified with an additional 60 spaces.

Ms. Strobel stated in her rebuttal that it was clear more work had to be done in working with the neighbors, and the applicant would be happy to continue doing that. She said she wanted to re-emphasize that this was a property that had been used as a church for a very long time. She said they were doing the best that they could given the site constraints they had, and again the primary purpose of filing the application was to provide parking on site.

Chairman DiGiulian closed the public hearing.

Mr. Hart clarified that he would like from the Department of Transportation (DOT) a specific response on the sight distance issue; a specific response about the new parking layout; and, if it satisfied DOT's objections to the configuration. Mr. Hart asked Ms. Strobel to provide photographs of landscaping related to Lot 26B; clarification regarding opportunities for parking on the service drive for the shopping center or other alternative parking; clarification of the landscaping and the boundary with the townhouses; clarification as to where the brick wall was to be located; and the number of special events including weddings and funerals.

Mr. Hart moved to defer VC 2002-MA-060 and SPA 75-M-060-2 until September 17, 2002. Mr. Pammel seconded the motion, which carried by a 7-0 vote.

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Page 631 August 13, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT E. WHITE, VC 2002-HM-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from side lot line. Located at 12821 Pinecrest Rd. on approx. 15,546 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-4 ((10)) 409.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, Agent, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said the applicant sought a variance to construct a two car garage addition with a room above, to be located 5.7 feet from a side lot line. She said the minimum side yard requirement was 8 feet; therefore, a variance of 2.3 feet was requested.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She said the applicants wanted to enclose an existing carport for a garage with living space above. She said the proposed garage would not exceed the footprint of the existing carport. She explained the unusual topography of the land and stated that it would be an undue hardship met to approve the application. She said there was no other place on the property where the addition could be placed. Ms. Greenlief stated that there was a sanitary sewer easement on the other side of the property which restricted

construction on that side. She stated that the variance would not be a detriment to the adjacent property, since that was the Fairfax County Parkway.

Ms. Greenlief showed current photographs of the front and back of the house. She said she had a petition that had been signed by adjacent neighbors who supported the application.

Chairman DiGiulian called for speakers.

Sa Dege, (no address given), came forward to speak in support of the application. He stated that he was the neighbor who lived directly across the street from the Whites and he said he had no objection to the building of the second story.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-HM-095 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT E. WHITE, VC 2002-HM-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from side lot line. Located at 12821 Pinecrest Rd. on approx. 15,546 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-4 ((10)) 409. 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 13, 2002; 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 the granting of a variance.
3. The shape of the lot is unusual.
4. The side lot lines converge as they go toward the rear of the property.
5. The house is sited on the lot in an unusual way.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by Daniel L. Wachob, dated June 13, 2002, as 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. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble and Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 030 August 13, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ERIC MERCIER, VC 2002-HM-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 1628 Hicks Dr. on approx. 1.22 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-2 ((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. Eric Mercier, 1628 Hicks Drive Vienna, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said the applicant sought a variance to permit the construction of a two car garage addition to be located 9.1 feet from the side lot line. She said the minimum side yard requirement was 20 feet.; therefore, a variance of 10.9 feet was requested.

Mr. Mercier presented the variance request as outlined in the statement of justification submitted with the application. He stated that he acquired the property in good faith. He said the lot was exceptionally narrow and would not meet the minimum lot width requirements as stated by the Ordinance. He said that due to the topography and vegetation on the south side of the house, the graveled area on the north side was the only place for the garage. He said he had a lot of large oak trees and he would like to protect his vehicles from them.

Mr. Mercier stated that his neighbor on the north side of the property supported the application and he had put a garage on his property a few years ago.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002-HM-097 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC MERCIER, VC 2002-HM-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 1628 Hicks Dr. on approx. 1.22 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-2 ((3)) 9. 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 13, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot has a pie shape, narrow at the front and wider at the back.
3. Based on the lot, the proposed location would be the only suitable place for the garage.
4. There is minimal impact on the neighbor of Lot 10.
5. The house on the adjacent lot is located 75 feet from the lot line.
6. The applicant has testified that the adjacent homeowner has no objection to the application.
7. The applicant is attempting to save mature oak 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.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by Peter R. Moran, dated November 14, 2000, as revised through May 29, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble 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 August 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 640, August 13, 2002, (Tape 1), Scheduled case of:

9:00 A.M. INES DEJESUS AND MARTHA A. CARRERO, VC 2002-LE-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.8 ft. from rear lot line and 7.0 ft. from side lot line. Located at 6528 Riefton Ct. on approx. 3,676 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((8)) 28A.

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 Lenk, Agent, Patio Enclosures, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said the applicants sought a variance to permit the construction of a sunroom addition to be located 7.0 feet from the side lot line, and 10.8 feet from the rear lot line. She said a minimum side yard of 8



feet and a minimum rear yard of 25 feet were required; therefore, variances of 1 foot for the side yard and 14.2 feet for the rear yard were requested.

Mr. Lenk, Agent, presented the variance request as outlined in the statement of justification submitted with the application. He said he had tried a few redesign options before applying for the variance. He said they had looked at relocating the project to another part of the house and they found it had not been feasible. He said they looked at the size of the project because the applicants originally wanted the project on the entire existing deck, but then agreed to a reduction to try and avoid variance proceedings.

Mr. Lenk stated that the applicants were interested in having an area outdoors to share with their children without the interference of insects or direct sunlight.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 2002-LE-089 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

INES DEJESUS AND MARTHA A. CARRERO, VC 2002-LE-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.8 ft. from rear lot line and 7.0 ft. from side lot line. Located at 6528 Riefton Ct. on approx. 3,676 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((8)) 28A. 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 13, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants' testimony and written justification indicates compliance with the required standards for the granting of a variance.
3. The applicants tried various other ways to put the sunroom on before asking 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 sunroom addition as shown on the plat prepared by George M. O'Quinn, dated, March 8, 2002, as revised through May 24, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel 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 August 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 642, August 13, 2002, (Tape 1), Scheduled case of:

9:00 A.M. NICHOLAS TSIMBIDIS, VCA 90-V-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in minimum required front yard of a lot containing 36,000 sq. ft. or less and permit dwelling to remain 29.4 ft. from front lot line. Located at 5860 Nicotine Trail on approx. 17,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (21) 34 - 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. Nicholas Tsimbidis, 5860 Nicotine Trail, Lorton, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She stated that the applicant sought approval of two variances. She said the first variance was to vary the requirement of Section 10-104 of the Zoning Ordinance to permit construction of an accessory structure, a swimming pool to be located in the minimum required front yard of a lot that contained 36,000 feet or less. She stated that the second variance was to permit the existing dwelling to remain 29.4 feet from the front lot line.

Ms. Langdon stated that the subject property was previously granted a variance to permit the dwelling to be 30 feet from the front lot line, rather than 50 feet as the Ordinance required. She said the dwelling was actually constructed 29.4 feet from the front lot line, which required an additional variance of 0.6 feet for the dwelling to remain.

Mr. Tsimbidis presented the variance request as outlined in the statement of justification submitted with the application. He referenced page three of the Staff Report which stated that in 1929 the Gunston Manor subdivision properties had been subdivided with all the lots equaling 25 feet by 100 feet.

Mr. Tsimbidis stated that his neighbors, Rand and Barbara Struford, submitted a letter of support for his application. He said that he and his wife and another neighbor gave a portion of their land to the County, which was then given to the Department of Transportation so they could put a cul-de-sac in which closed the woods in the front of his home to further development.

Ms. Tsimbidis stated that his house was surrounded by a great number of trees and the closest neighbor was about 500 feet away. He said he felt the variance would not have any impact on anyone.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VCA 90-V-096 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NICHOLAS TSIMBIDIS, VCA 90-V-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in minimum required front yard of a lot containing 36,000 sq. ft. or less and permit dwelling to remain 29.4 ft. from front lot line. Located at 5860 Nicotine Trail on approx. 17,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (21) 34 - 40. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 13, 2002; 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 the granting of a variance.
3. The lot is exceptionally narrow.
4. There is an existing sanitary sewer drain field that is located behind the house, which would preclude the swimming pool from being placed further to the rear.
5. There was initially an error in building location.
6. This does not change the character of the zoning district or have any detrimental impact on the surrounding communities.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 swimming pool as shown on the plat prepared by Paul A. Garcia, dated, February 22, 2002, as revised through May 31, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. Approval for the location of the swimming pool shall be obtained from the Fairfax County Department of Health.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Mr. Kelley moved to waive the 8-day waiting period. Mr. Pammel and Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Page 645 August 13, 2002, (Tape 1), NICHOLAS TSIMBIDIS, VCA 90-V-096, continued from Page 644

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 13, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 645 August 13, 2002, (Tape 1 & 2), Scheduled case of:

9:30 A.M. NORMAN AND PATRICIA MIXON, A 2002-PR-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have erected an accessory structure and a fence which do not comply with applicable requirements and established a junk yard and storage yard on property in the R-4 District, all in violation of Zoning Ordinance provisions. Located at 6803 Custis Pkwy. on approx. 12,482 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 451.

William Shoup, Deputy Zoning Administrator, indicated that the appellant wanted to request a deferral.

Mr. Twist, agent for the appellant, stated that the appellant requested a deferral for three reasons. He said the first reason was because the appellant did not receive a copy of the recommendation from staff to the BZA and they wanted an opportunity to review the information. Mr. Twist stated that the second reason was that the public hearing notice that was posted on the property indicated that the appellant wanted authority from the BZA to put a junk yard on his property. He said that caused outrage among the community. Mr. Twist said the third reason for deferral was to invite the BZA to visit the property. He said when the inspectors came to the property they tried to barge through the door, against the wishes of a property owner. He said when the inspectors could not get access to the property, they used taxpayer money for helicopters to view the property. Mr. Twist offered to have the appeal deferred for decision after receiving testimony.

Mr. Shoup stated that staff objected to deferring the appeal. He said, in response to Mr. Twist's comments that he did not receive the staff report until the date of the public hearing that the staff report was mailed the week prior as was done with all other cases. Mr. Shoup said Mr. Twist had the opportunity to contact the office about not receiving a staff report. Mr. Shoup said with regard to the public notice, Mr. Twist indicated that the public notice suggested that Mr. Mixon was requesting permission from the BZA to establish a junk yard on the property, when in fact that was not what the notice said. He said the notice reflected that this was an appeal of a determination that a junk yard existed on the property. Mr. Shoup said the notice was posted in accordance with Zoning Ordinance provisions and posted just like any other property. Mr. Shoup said he took exception to the representation that the Zoning Inspectors tried to barge onto the property. Mr. Shoup stated that they approached the property and the investigation of the complaint the same way as all other complaints. He said they contacted Mr. Mixon's adult son and asked permission to view the back yard and the son allowed them to go into the back yard. Mr. Shoup indicated that the inspectors were present to answer questions. He said staff was prepared to proceed with the appeal and asked the BZA not to defer.

Mr. Pammel stated that he visited the property and there was not a question as to the intent of the public hearing sign.

Mr. Twist stated that he disagreed with that opinion. He read the notice as it appeared on the sign and stated that a reasonable person could conclude that there was an appeal to permit a junkyard since the zoning people were saying that it was established.

Chairman DiGiulian stated that was not what the notice said.

Mr. Pammel said if Mr. Twist needed a motion from the BZA, he would move that the Zoning Administrator's posting of the property was correct, legally and factually.

Mr. Kelley said he also went to the property and came to the same conclusion as Mr. Pammel and he said he would second his motion if that was appropriate.

Ms. Gibb stated that the appellant's argument was that there was prejudice and the people were stirred up; however, there was no one present in the audience and she would assume that the effect of an inflammatory incorrect sign would be that you would have the neighbors present at the hearing. Ms. Gibb said she was not prejudiced by the posting so not only was the sign accurate but it obviously did not have any effect.

Mr. Hammack stated that he did not think there was any reason to vote.

The motion carried by a vote of 5-0-1. Mr. Hammack abstained from the vote.

Chairman DiGiulian noted that a motion was needed with regard to the deferral request.

Mr. Shoup stated that one of the inspectors, Paul McAdam, who had critical information on the case, would be on medical leave all of September and part of October. He said that was another reason why staff objected to a deferral.

Mr. Pammel stated that the issue was basically if the use was constructed legally; was a building permit obtained originally; and if the use far exceeded the limits that were required by the Zoning Ordinance. He said these were all Zoning Ordinance issues. Mr. Pammel said he saw what he needed to see from both the front and the rear of the property and he was capable of moving forward with the application. He moved to deny the request for deferral.

Ms. Gibb and Mr. Ribble seconded the motion, which carried by a vote of 5-2. Mr. Hammack and Mr. Kelley voted against the motion.

Jack Reale, Zoning Administration Division, stated that the issues involved a number of zoning violations which had been observed on the appellant's property. He said the violations included the following: that the appellants had constructed a two-story 18 or 19 foot tall storage shed, which contained approximately 704 square feet of gross floor area. Mr. Reale stated that under the Zoning Ordinance, a storage shed was allowed as accessory to a dwelling in the R-4 District; however, it could not contain greater than 200 square feet in gross floor area. He said there was a building permit application from the appellant in the staff report, which the appellant certified a height for the structure as being 18 or 19 feet. Mr. Reale said as far as the location of the storage shed was concerned, under the Zoning Ordinance, an accessory storage shed could not be located any closer than a distance equal to its height to a rear property line. He said on the appellant's certified statement, the shed was indicated to be 16 feet from the rear property line and it was found to be over 150 square feet of gross floor area; therefore, it required a building permit. Mr. Reale stated that County records did not indicate that the appellants had received a building permit for the structure. He said the second violation was that the appellants had erected a fence in their side and rear yards that was estimated at 8 feet or higher; but the Zoning Ordinance only allowed a fence in a side and rear yard not to exceed 7 feet in height. Mr. Reale said the appellant's property also contained junkyard and storage yard uses as defined under the Zoning Ordinance. He said the Zoning Ordinance defined a junkyard as the use of any space, whether inside or outside a building, for the storage, keeping or abandonment of junk, including scrap metals, or other scrap materials. He said a storage yard was defined as the use of any space whether inside or outside a building, for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, boats, and/or farm machinery. Mr. Reale said inspection of the appellants' property found scrap materials, scrap metals, plastic sheeting, lumber, trash cans filled with debris, vehicles and vehicle parts. He said the observation of all these materials led to the conclusion that the appellants were maintaining a storage yard and junk yard. Mr. Reale stated that a storage yard or junk yard was not a permitted use in the R-4 District.

Mr. Twist stated that there was a Greenway construction project of the County's and the appellant permitted the County to be on his property and to store their equipment and their vehicles. He presented a photograph of the County property. He said the appellant had asked that the debris be removed and that had not been done. Mr. Twist stated that the appellant had no authority to deal with County property, even if it was the Commonwealth's position that it belonged to a contractor. He presented another photograph reflecting the actual construction. Mr. Twist stated that the appellant submitted an application for a building permit which the County could not find. He said the shed and the fence had been there over 25 years. Mr. Twist stated that the County had a sewer running under the side of the appellants' property and there was no easement for it. He said if laches did not apply to the shed, then it should not apply to the storm sewer either. He said it was unfair and ungracious for a government to complain that the appellant had not cleaned up the mess made by the County.

Mr. Hammack asked if the photograph reflected the property currently. Mr. Mixon replied no.

Page 647, August 13, 2002, (Tape 1 & 2), NORMAN AND PATRICIA MIXON, A 2002-PR-016, continued from Page 646

Mr. Twist said if the County made excuses for why they did not have an easement, those would be the same things that they would argue for why they had a building permit for the shed. He said the reason he suggested a continuation so the BZA could investigate whether the County had an easement before they ruled on laches.

Mr. Hammack said the BZA had very narrow issues to consider. He said they had no interest in the easement, and that would have to be taken up with some other part of the County. He said the BZA could determine only whether the County was correct in its determination. Mr. Hammack said the BZA did not have the right to hear constitutional issues.

Mr. Twist said he was suggesting that there could not be a violation after 25 years because of laches.

Mr. Hammack said laches did not run against the County government and he did not consider that a valid legal issue for purposes of the appeal.

Mr. Twist said the inspectors never had permission to be on the property and there was no way that they could testify under oath about the height of the fence, the condition of the back yard or the shed because no property owner contiguous gave them permission either. He said there was no competent evidence about the height of the fence or the condition of the yard.

Mr. Hammack said the staff report and the testimony of the inspector that certain things existed there was accepted as competent evidence.

Mr. Twist said this could be considered a quasi-criminal proceeding and people had a constitutional right to no unlawful searches and seizures.

Mr. Hart said he read the papers that were submitted and agreed with Mr. Hammack's comment about the inapplicability of laches in this context. He asked Mr. Twist if he had any legal authority for the proposition that laches applied to a County in the course of a zoning violation or that laches could apply to a subdivision of the Commonwealth.

Mr. Twist replied that the BZA should remember the 48 inch sewer and even though they did not care about that, it would be an issue because there was no easement. He said even though it was not in their jurisdiction, they ought to think through the public policy or they should not wait 25 years before they do something.

Mr. Hart said the sewer issue was not before the BZA and it did not belong to the BZA. He asked Mr. Twist if he had any legal authority in Virginia for the proposition that the Statute of Limitations would bar a County from enforcing a continuing zoning violation.

Mr. Twist responded that he did not.

Mr. Hart asked if there was a dispute that the shed was too close to the rear line.

Mr. Twist said no person in a quasi-criminal proceeding could be forced to testify against themselves and there was no answer to that question. He said the BZA had no competent evidence that the zoning laws were being violated because no person had lawful entry to the property or the property of the neighbors.

Mr. Hart said they had a series of aerial photos and a building permit application that located it too close to the line.

Mr. Twist said they could not be compelled to incriminate themselves or answer questions that might lead to that.

Paul McAdam, Zoning Inspector, stated that he and Inspector Bruce Miller visited the property on April 17, 2002. He said they received a complaint that there was an accessory storage structure, junk and debris in the rear yard. He said when they got in the back yard they observed a lot of construction material. He said the appellant's son told him that his dad collected the items and took them out of state. He said on April 23,

2002, he requested permission to inspect the property and Mrs. Mixon came out and asked him to exit the property and gave him two Freedom of Information Requests. Mr. McAdam said he had not been back on the property because he was informed by the County Attorney's office that he was not allowed on the property because the Mixons did not want him there.

Ms. Gibb asked if the materials observed on the site were consistent with construction. Mr. McAdam replied no.

Mr. Hart asked Mr. McAdam if he was involved in the helicopter situation. Mr. McAdam replied that he was not but Inspector Miller was involved with the helicopters.

Mr. Hart asked Inspector Miller what he observed from the helicopter. Bruce Miller, Senior Zoning Inspector, stated that he observed that the items in the rear yard that were previously observed from the ground level, had since been covered up with tarpaulins. He said a quarter to a third of the rear yard was covered with debris.

Chairman DiGiulian called for speakers.

Mr. Twist submitted letters in support of the appeal.

Mr. Reale said he had been contacted the day before by a neighbor that indicated that over the course of the last week or two, the appellant had been removing a very substantial amount of material from the property.

Mr. Hart asked Mr. Twist if it was his position that on an appeal of a Zoning Administrator's determination that it was the County that had the burden of proving the appellant wrong and that the appellant did not have to persuade the BZA that the Zoning Administrator was wrong by coming forward with evidence rebutting the measurements.

Mr. Twist replied that the burden was for them to put up competent evidence in front of the BZA.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved that the BZA uphold the decision of the Zoning Administrator. He said the appellant, through his attorney, failed to present any evidence that the County's position was incorrect. He said they refused to testify on the grounds that they would not incriminate themselves. Mr. Pammel said from a visual inspection as well as the documents showing the shed on the property, it clearly exceeded the requirements of the Zoning Ordinance. He said whether it was constructed yesterday or 25 years ago was not the issue. Mr. Pammel said the evidence presented by virtue of the building permit submitted by the appellant in 1993, clearly indicated a structure that exceeded the requirements of the Zoning Ordinance and as set forth in the appellant's own application. He said a building permit was required and it was never obtained. Mr. Pammel said with respect to the issue of the junk yard, the violation was set forth as a result of an inspection on April 17, 2002, and there was a visual inspection by a Fairfax County Zoning Inspector and he determined, in his professional capacity, that such a violation existed and that it met the definition of a junk yard in the Ordinance. He said there was questionable testimony with respect to the fence height, but by his observation standing and looking at the fence from both the right side and the left side of the house, it appeared to be in excess of 7 feet in height. Mr. Pammel said since there was no accurate dimension reflecting what the height of the fence, he was not going to set that forth as part of the decision of the BZA.

Ms. Gibb seconded the motion.

Mr. Hart said this was a somewhat difficult case, because of some of the different arguments that had been presented. He said the issue of the easement was entirely extraneous and had nothing to do with either the Zoning Administrator's determination or the BZA's function. He said the laches argument was utterly without merit in this context. He said if laches were a defense to zoning violations, and if they were going to be defense, the BZA would at least need some authority or some case law. Mr. Hart said the size of the shed was in excess of what needed a building permit. He said there was abundant evidence that the shed was too close to the rear lot line. Mr. Hart said with respect to the fence and the storage yard, he would find Mr. McAdam and Mr. Miller entirely credible and this kind of inspection and report to the BZA was typical of what



Page 649 August 13, 2002, (Tape 1 & 2), NORMAN AND PATRICIA MIXON, A 2002-PR-016, continued from Page 648

was seen in zoning violation cases or storage yard cases. He said the BZA could rely on visual inspections by inspectors as to the character of what was being stored. Mr. Hart said the appellant, had the rudimentary burden of presenting something in an appeal that would be persuasive, that in some way the Zoning Administrator had made either an error of law or was factually inaccurate. He said the appellant had given the BZA no authority on the legal principles and nothing in the way of persuasive evidence to rebut.

Ms. Gibb stated that the BZA heard cases every week and looked with great sympathy and empathy to the appellants and listened carefully. She said many times the Zoning Administrator was overturned, but in this case the BZA was not presented with any facts or any law that could support the appellants. She said an opportunity was missed perhaps to focus on what would have been persuasive by being caught up in the 5<sup>th</sup> Amendment and the Constitution.

Mr. Hammack said this was not a criminal court, but a Board of Zoning Appeals set up under the Virginia Code, with statutory authority. He said when an appellant filed an appeal they assumed some burden to show that the Zoning Administrator had acted in error. He said he did not feel that the appellant had done that. He said it was unfortunate if the appellant misunderstood how the Statute functioned, but the appellant chose the forum. Mr. Hammack said he would support the motion.

The motion carried by a vote of 7-0, and the determination of the Zoning Administrator was upheld.

Mr. Shoup asked if the motion only covered the storage shed and the junk yard uses not the fence.

Mr. Pammel said it was the intent to make no finding with respect to the fence because there was no documentation.

Mr. Hart moved to uphold the Zoning Administrator with regard to the fence. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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Page 649 August 13, 2002, (Tape 2), After Agenda Items:

Approval of August 6, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions for August 6, 2002. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

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Page 649 August 13, 2002, (Tape 2), After Agenda Items:

Consideration for Request for Intent to Defer  
Jimmy and Margie Walker, A 2002-LE-001

William Shoup, Zoning Administration Division, stated that staff objected to a deferral. He said that the property owner was cited for having a junkyard/storage yard and a bus rental company in violation of the Zoning Ordinance.

Mr. Shoup stated that this case was originally scheduled for April 30, 2002, but was deferred at Mr. Arnold's request because they were pursuing site plan approval. He said they were now asking for deferral because the appellant's engineer failed to respond to the Department of Public Works and Environmental Services (DPWES) determination on April 30, 2002. They stated that the site plan was not even acceptable for review.

Mr. Shoup stated that the notice in this case had been issued December 15, 2001, and they were cited at the same time for proffer violations. He said the applicant appealed the proffer violations to the Board of Supervisors (BOS) and the BOS upheld zoning's decision on the proffer appeal on May 6, 2002.

Page 650 August 13, 2002, (Tape 2), After Agenda Items, continued from Page 649

Mr. Shoup stated that he believed the delay had been going on for much longer than necessary and there had not been a good faith effort in pursuing site plan approval which would be just one step in the overall effort to bring this property into compliance.

Mr. Pammel moved to deny the Request for Deferral. Mr. Pammel seconded the motion, which carried by a 7-0 vote.

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Page 650 August 13, 2002, (Tape 2), After Agenda Items:

Approval of Additional Time  
S. Gordon Jr. and Patricia M. Leary, VC 99-V-154

Mr. Pammel moved to approve an additional time of 12 months, until July 19, 2003, for VC 99-V-154. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

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Page 650 August 13, 2002, (Tape 2), After Agenda Items:

Approval of Additional Time  
Harvest Assembly Baptist Church, SP 89-V-020

Mr. Pammel moved to approve an additional time of 12 months, until August 9, 2003, for SP 89-V-020. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

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Page 650 August 13, 2002, (Tape 2), After Agenda Items:

Approval of January 22, 2002; February 12, 2002; March 26, 2002;  
April 16; 2002; April 30, 2002; and May 7, 2002 Minutes

Mr. Pammel moved to approve the minutes of January 22, 2002; February 12, 2002; March 26, 2002; April 16, 2002; April 30, 2002; and May 7, 2002. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

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Mr. Pammel questioned staff regarding the letter from Mr. John Murphy. Ms. Langdon stated that the letter dealt with a special permit that had been approved for Ananda Buddhist Meditation Institute on Annandale Road. She said Mr. Murphy stated that the Institute had violated their special permit and he asked that their special permit be revoked.

Ms. Langdon stated that she forwarded the letter to Zoning Administration and they would have a Zoning Inspector look at the site to see if there were violations of the special permit.

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As there was no further business, the Board adjourned at 12:02 p.m.

Minutes By: Judith A. Gobbi

Approved on: September 9, 2003

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 10, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb, Paul Hammack, James Hart, Robert Kelley, James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 651, September 10, 2002, (Tape 1), Scheduled case of:

9:00 A.M. KYLE P. MAY, VC 2002-MA-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 6831 Little River Tnpk. on approx. 28,518 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 12A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kyle May, 6831 Little River Turnpike, Annandale, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit a fence greater than 4.0 feet in height to remain in the front yard. A portion of the fence is 6.0 feet high and a portion is 7.0 feet high. The Zoning Ordinance allows a maximum fence height of 4.0 feet.

Mr. May presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that he had contacted the County on April 3, 2002, and requested information regarding the fencing regulations and he was informed that due to the status of Little River Turnpike being a major thoroughfare, an 8.0 foot fence was acceptable. He said three or four weeks after he had the fence installed he was contacted by Zoning Enforcement and was told that the height of the fence violated the Zoning Ordinance.

He stated that he needed the fence to be 8.0 feet in height to provide safety for his family and to protect his yard from trash and noise pollution that was generated by the traffic on Little River Turnpike. He said the fence did not cause any sight distance problems and he had full neighborhood support.

Chairman DiGiulian called for speakers.

Park Neilson, Indian Run Townhouse Association, came forward to speak in opposition. He said the fence caused sight distance problems for traffic exiting and entering the townhouses from the exit lane on Route 236. He suggested that a mirror be installed at the end of the applicant's driveway to mitigate the problem.

Mr. May, in his rebuttal, submitted photographs illustrating that there was adequate sight distance in the exit lane on Route 236. He said the fence, in the area adjacent to the exit lane, was rounded to allow for adequate sight distance. He stated that if the fence were to be moved back, the slope of his land would infringe on the height and the fence would no longer be tall enough to protect his property.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer decision to October 8, 2002, to allow the applicant time to research options for realigning the fence. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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Page 651, September 10, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CAFE U & I INC., SPA 96-M-006 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 96-M-006 previously approved for commercial recreation use to permit change in permittee. Located at 7031 Little River Tnpk. on approx. 3.07 ac. of land zoned C-6, HC, SC and CRD. Mason District. Tax Map 71-1 ((1)) 116A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Byung J. Oh, 7031-14C Little River Turnpike, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicant requested a change in permittee with no other proposed changes.

Mr. Oh presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the request was for a change in permittee and there were no other proposed changes.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 96-M-006 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAFE U & I INC., SPA 96-M-006 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 96-M-006 previously approved for commercial recreation use to permit change in permittee. Located at 7031 Little River Tnpk. on approx. 3.07 ac. of land zoned C-6, HC, SC and CRD. Mason District. Tax Map 71-1 ((1)) 116A. 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 10, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the standards for the granting of a special permit.
3. The applicants are requesting a change in permittee and all other conditions as related to the original permit stand in force and will not be changed.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 4-603 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Café U & I, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 7031 Little River Turnpike, Suite 14-C, (1,860 square feet), and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this indoor commercial recreation use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the Special Permit plat prepared by Huntley, Nyce & Associates, P.C., and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation shall be limited to 4 p.m. until 2 a.m. daily.
5. There shall be a maximum of one (1) employee at any one time associated with this use.
6. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as may be determined by the Director, Department of Public Works and Environmental Services.
7. Signs shall be permitted in accordance with Article 12, Signs.
8. The existing vegetation shall be preserved and maintained as indicated on the Special Permit Amendment plat and shall satisfy the Transitional Screening requirement. The eight (8) foot high masonry wall shown on the approved Special Permit Amendment plat along the southern and eastern lot lines shall satisfy the Barrier requirement.

These conditions incorporate and supersede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless a new Non-RUP has been issued. The Board of Zoning Appeals may grant additional time to obtain a new Non-RUP if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 653 September 10, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT M. & BARBARA B. NOVOGRATZ, SP 2002-MV-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 shed to remain 2.0 ft. from rear lot line and 0.9 ft. from side lot line and trellis 0.0 ft. from rear lot line. Located at 8724 Waterford Rd. on approx. 15,344 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((6)) (16) 23A. (Admin moved from 7/2/02 and 7/9/02 per appl. req)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Novogratz, 8724 Waterford Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. The applicants requested a reduction to minimum yard requirements based on an error in building location to permit a shed to remain 2.0 feet from the rear lot line and 0.9 feet from the side lot line and to permit a trellis 0.0 feet from the rear lot line where it was located on top of a fence. The Zoning Ordinance requires sheds and other accessory structures including trellises greater than 8.5 feet in height to be located no closer than the structures' height from the rear lot line and no closer than the minimum side yard; therefore, the amount

of error for the shed is 11.2 feet for the rear yard and 11.1 feet for the side yard. The trellis must be located 11.0 feet from the rear yard; therefore, the amount of error is 11.0 feet.

Mr. Novogratz presented the special permit request as outlined in the statement of justification submitted with the application. He stated that during the previous year they had performed a major renovation on their house along with the roof and siding. He said they replaced a metal shed with the current shed with the same pitched roof style and siding as the home. He stated that he was unaware that they were in violation of the Ordinance. He informed the Board that the neighbor to the rear of their property expressed concern because she could see the roof of the shed from her backyard and to mitigate the problem the applicants installed the trellis on the top of the fence to provide screening.

Mr. Hart asked if there was adequate space between the shed and the fence to allow for maintenance. Mr. Novogratz replied that there was.

Chairman DiGiulian called for speakers.

John Crossley, no address given for record, came forward to speak in support of the application. He stated that he had constructed the shed for the applicants. He reiterated that there was adequate space between the shed and the fence to allow for maintenance.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-MV-024 for the reason stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT M. & BARBARA B. NOVOGRATZ, SP 2002-MV-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 shed to remain 2.0 ft. from rear lot line and 0.9 ft. from side lot line and trellis 0.0 ft. from rear lot line. Located at 8724 Waterford Rd. on approx. 15,344 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((6)) (16) 23A. (Admin moved from 7/2/02 and 7/9/02 per appl. req) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 2002; 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;

Page 655, September 10, 2002, (Tape 1), ROBERT M. & BARBARA B. NOVOGRATZ, SP 2002-MV-024, continued from Page 654

- 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 shed and a trellis, as shown on the plat prepared by Thomas F. Conlon, Jr., dated through April 9, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 655, September 10, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      RAINBOW ACADEMY LLC AND ST. KATHERINE'S GREEK ORTHODOX CHURCH, TRUSTEES, SPA 93-M-119 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 93-M-119 previously approved for a church and related facilities to permit child care center and site modifications. Located at 3149 Glen Carlyn Rd. on approx. 4.43 ac. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 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. Shawn Lord, 46018 Grammercy Terrace, Sterling, Virginia, replied that it was.

Mr. Hart made a disclosure that he stated would not affect this ability to participate in the hearing.

Mavis Stanfield, Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicants requested a special permit amendment to allow a child care center and an associated open playground. The child care center would operate Monday through Friday between the hours of 6:30 a.m. to 6:30 p.m. and would have a maximum daily enrollment of 99 children with a maximum of 19 employees at any given time. The child care center would operate out of the smaller multipurpose building located toward the north side of the property and would primarily utilize the 19 space parking area located immediately west of the building. Staff recommended approval of the application subject to the approval of the development conditions.

Mr. Hart requested an explanation regarding where the playground was to be located and asked if that issue changed the new landscaping that was proposed.

Ms. Stanfield replied that the playground already existed but was not shown on the previously approved plat. She noted that the playground was located within the Environmental Quality Corridor, (EQC) and explained staff's position that the EQC line and the Resource Protection Area (RPA), lines were the same line, which extended along the limits of clearing and grading. Ms. Stanfield stated that a possible location for the playground would be on the west side of the proposed child care center building. She said the location of the child care center on the west side of the property would not interfere with the proposed landscaping.

Mr. Lord presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained that he was co-owner of the Rainbow Academy which was the first African American non-secular child care center in Fairfax County. He said the Academy would provide high quality child care that was much needed in the area. Mr. Lord stated that he was not in agreement with staff's position that a new playground needed to be constructed. He suggested that the proposed location for the playground would interfere with existing landscaping. He said the playground had been in existence since 1969 and requested that the Board allow the playground to remain. He submitted aerial photographs of the playground from 1970. He questioned the location of the EQC line and RPC line on the plat.

Jim Nikolaukus, member of the St. Katherine's parish for approximately 24 years came forward to speak in support of the application. He stated that his three grown children played on the playground 34 years ago. He said many trees would need to be relocated in order to construct a playground on the west side of the site.

Charles Dunlop, Walter L. Phillips, Inc., Falls Church, came forward to speak in support of the application. He said the EQC line shown on the plat was shown on the site plan that was approved on June 29, 2001. He stated that the flood plain for Long Branch was an altered flood plain. He said the Long Branch stream channel was conveyed in a concrete channel which was constructed as part of a County project and the flood plain limit for that was largely contained within the channel. He said the area to the flood plain was graded and maintained on a regular basis. He contended that the existing playground was within the RPA only because the County imposed an RPA line on top of it. He said the playground use would be consistent with a permitted use in the RPA.

Ms. Gibb asked what the surface of the playground area consisted of. Mr. Dunlop replied it was grass and mulch.

Ms. Gibb asked staff whether it mattered how long the playground had been in existence as long as the playground did not show on the prior special permit application. Susan Langdon, Chief, Special Permit and Variance Branch, replied had the playground been shown on the special permit plat in 1993, staff would have had the same concerns and would not have supported the application. She said the playground would be used on a daily basis and it was located in a designated RPA that was approved by the County.

Ms. Gibb asked what staff's concern was regarding to the increased use of the playground. Ms. Langdon replied that the grass would die down, the mulch would get pushed away, the water quality would become degraded and the chances for erosion would increase. She said it was a use in the RPA that normally would not be allowed if there was another area on the property to relocate the playground.

Ms. Gibb asked if the Chesapeake Bay Act was in existence in 1993. Ms. Langdon replied that it was not however, the EQC policy was in the Comprehensive Plan. Ms. Gibb asked for clarification of the allegation that the EQC line was appropriately outlined on an approved site plan. Ms. Langdon explained that the Department of Public Works and Environmental Services, DPWES, was not required to review for the EQC; however, it was a requirement of the Zoning Department because it was a policy in the Comprehensive Plan. She explained that upon review of the EQC it was found that the line that was shown on the plat was incorrect and the EQC area was larger. She said the applicants were asked for additional information and for a meeting with the County's Environmental Planner; however there was no response from the applicants.

Mr. Dunlop noted that the area in question was encumbered by two easements which were a 20 foot sanitary sewer and a 20 foot easement for maintenance and access through the concrete channel. He contended that it was not in character for an EQC to contain easements.

Mr. Hammack asked where the EQC line was located on the previously approved plat from 1993. Ms. Stanfield replied that it was where the RPA line was on the current plat.



Ms. Langdon illustrated the differences between the applicants' and staff's opinions of where the RPA and EQC lines were located on the plat.

Mr. Lord submitted photographs of the area staff proposed to locate the playground. He voiced his concern that the area would not be suitable without disturbing the existing landscaping.

Chairman DiGiulian called for speakers.

Lt. Commander Elizabeth Stearer, no address given for record, came forward to speak in support. She stated that St. Katherine's had been a wonderful neighbor throughout the construction process. She said good quality child care in the area was hard to find and the center would be an asset.

Richard Looning, Munson Hill Family Association, came forward to speak in opposition. He stated that he had lived in his home for 17 years. He stated that he had witnessed the creek raise up and flood over the playground. He alleged that the church knew all along where the flood plain was on the property. He voiced his concern that the church was leasing the property to a corporation. He stated that the child care center would add to the already existing traffic problems in the area. He said there were plenty of child care centers in the area.

Theresa Wilson, Hardwick Place Neighborhood Association, came forward to speak in opposition. She explained that her townhouse community was to the south of the Church with many houses bordering the drainage area that abuts the flood plain. She said the current playground was originally built to be used by the church for Sunday school for children between 5 and 12 years of age. She stated that the playground was dangerous to play on and suggested that if the child care center was given permission to utilize the playground that it be completely replaced with updated equipment. Ms. Wilson informed the Board that noise would be an issue for the homes located near the playground. She said she was concerned with the additional traffic that would be generated by the child care center.

Frank Coblitz, 6014 Munsen Hill Road, came forward to speak in opposition. He stated that he was concerned about the possibility of additional traffic in the area.

Margurite Ashton-Hogue, no address given for record, came forward to speak in opposition. She stated that she had lived in her home since 1958 and her family owned the 400 foot boundary of the subject property. She informed the Board that she never received a public notice regarding the hearing. She said she found out several days before the hearing and hired counsel but because of the short notice she had to represent herself. She said her home was skewed to the property in question and her living room window was 15 feet from the church parking lot. She stated that the church had a commercial dumpster on the property line that was picked up once a week between the hours of 2:00 a.m. and 4:00 a.m. and she was concerned that with a full time commercial use there would be multiple dumpsters and pick ups. She requested that the Board defer the hearing until such a time as her council could be present.

Mr. Hart asked why Ms. Ashton-Hogue had not been notified as she lived directly next to the subject property. Ms. Langdon replied that there was evidence that a notice for Ms. Ashton-Hogue had been mailed Certified Return Receipt to a post office box but the green certification card had not been returned to the County.

Tulea Beltrand, Magnolia Avenue, came forward to speak in opposition. She stated that she was adamantly opposed to the child care center because of the detrimental effect it would have on the welfare and safety of the adjoining neighborhoods.

Francis Cocane, 6004 Lebanon Drive, came forward to speak in opposition. He said he had issues with the increased traffic. He stated that the parishioners used Lebanon Drive for off site parking and on the weekends the road was reduced to only one lane. He informed the Board that two vehicles in the neighborhood were hit by parishioners and his driveway was often blocked.

Dennis Hogue, 3139 Glenn Carlin Road, came forward to speak in opposition. He stated that he was opposed to the child care center because of traffic issues and the increase in intensity on the property. He said there had never been a playground on the property. He said all that was on the site was a small swing

set and a basketball hoop. He requested that the Board deny the application or defer until his council could be present.

Mr. Lord, in his rebuttal, contended that he notified the required amount of neighbors. He said a licensed specialist from Fairfax County visited the playground facility and deemed it proper and to be used for regular child care. He said the playground met the safety standards for children ages of 2½ and above; therefore, no changes would need to be made. He stated that the drop offs and pick ups would be before peak rush hour times so the child care center would not increase traffic in the area. He said the noise generated by the playground would be during the day when the majority of the neighbors would be at work.

Chairman DiGiulian asked how much time would be needed to resolve the issue regarding the RPA and EQC lines. Ms. Langdon suggested a continuance of at least a month to allow for renotification. Mr. Dunlap suggested a continuance of 6-8 weeks.

Mr. Hammack asked the applicant for information to be presented at the next hearing regarding how much on-site parking was available with the previously approved construction.

Mr. Hart asked staff for information to be presented at the next hearing regarding dumpsters and dumpster usage, what equipment the existing playground consisted of, if there was landscaping to buffer the playground from the neighbors, if there was to be any overlap in the services and the child care center hours, parking overflow into the neighborhood and whether the development condition from the 1993 special permit for the church that pertained to compliance with the Chesapeake Bay Act apply to the child care center as well.

Mr. Hart asked Mr. Dunlap for more information to be presented at the next hearing regarding the feasibility of relocating the playground to the area staff had suggested.

Ms. Gibb moved to continue SPA 93-M-119 to November 12, 2002, at 9:00 a.m. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

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Page 658 September 10, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MITCHELL J. LIAKOS & MELISSA M. BUCKMASTER, VC 2002-HM-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in frontyard. Located at 1643 White Pine Dr. on approx. 36,116 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((25)) (2) 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. Mitchell Liakos and Melissa Buckmaster, 1643 White Pine Drive, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit a fence greater than 4.0 feet in height to remain in the front yard. The Zoning Ordinance permits a maximum fence height of 4.0 feet in any front yard; therefore, a variance of 2.0 feet was requested for the fence height.

Mr. Liakos and Ms. Buckmaster presented the variance request as outlined in the statement of justification submitted with the application. Mr. Liakos explained that the fence was approximately 160 feet in length and 6.0 feet in height and was constructed of treated pine. He said the main reason for installing the fence was due to the concerns they had for the safety of their children. He said the driveway along the back of the property presented a hazard to the children because there was a home under construction directly behind their house and large construction vehicles traveled that driveway and were in close proximity to where their children played in the backyard. He said the home at 1617 Whitepine Drive had a pool in the front yard with a small chain length fence surrounding it and it was in clear view from their backyard; therefore, a 6.0 foot fence was constructed to obstruct that view and to prevent their children from scaling the fence. Mr. Liakos stated that there also were a number of unleashed dogs that roamed the neighborhood and the fence would prevent the dogs from entering their yard. He said the County building permit for their lot indicated that the

backyard was a backyard and not a front yard and the redesignation of the backyard as a front yard caused the need for the variance. He stated that they had spoken to all of the affected property owners and the developer regarding the fence and some people had an issue with regard to the aesthetics of the fence as well as a sight distance issue on an adjacent property and as a result the builder had agreed to perform a fence relocation on the adjacent property, install plantings to make the fence's appearance more palatable and make some outlet road improvements. He submitted an agreement from the builder that was signed by three of the four neighbors that were directly adjacent to the property in question.

Chairman DiGiulian called for speakers.

Jon Secas, Manager, Symphony Meadows, LC, came forward to speak in support. He said his company constructed the applicants' home. He informed the Board that there was no indication in the subdivision or building permit process that the backyard was deemed a front yard. He said in most cases that circumstance was clearly identified during those processes. Mr. Secas stated that his company was bearing the cost of all of the improvements to the fence and to the outlet road to assist the neighbors to the rear of the subject property. He indicated that the sight distance issue regarding the fence on an adjacent property had already been dealt with.

Robert Thomas, 1617 Whitepine Drive, came forward to speak in opposition. He stated that before any of the new development, his home was located on a private street and the new development resulted in a pipe stem driveway and as a result, the post office refused to deliver mail to his home. He said the pool in his front yard was in compliance with the Zoning Ordinance. He stated that there were no safety issues in the neighborhood that would cause the need for a fence of this height. He said a portion of the driveway from Lot 7 to Lot 5 was considered a public street and large trucks could no longer travel the driveway due to the location of the fence. He requested that the Board deny the variance so the fence would have to be lowered to 4.0 feet in height.

Mr. Hart stated that Mr. Thomas had signed the agreement from the builder which stated that he was in support of the fence being 6.0 feet in height and was aware that the builder had agreed to fix the pipe stem problem which would result in him getting his mail. He asked Mr. Thomas why he was opposing the variance as he had signed the agreement. Mr. Thomas replied that he had changed his mind.

Natalie Zelkin, 1612 Whitepine Drive, came forward to speak in opposition. She stated that Mr. Floyd, who owned the adjacent property where the fence caused sight distance problems, had to sign the agreement and he had and because of that fact the agreement was not valid.

Steward Smith, 1606 Whitepine Drive, came forward to speak in opposition. He stated that inadequate sight distance was a safety issue that needed to be dealt with.

Mr. Hart asked Mr. Smith if his concern of inadequate sight distance dealt with Lot 7 which was the adjacent property rather than the property in question. Mr. Smith stated that was correct.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that a variance for Lot 7 had been submitted; however, it had not been accepted or scheduled.

Ms. Buckmaster, in rebuttal, stated that Mr. Secas informed her that the problem with the pipe stem driveway would be moot when the turn around driveway was constructed and it would also allow for large vehicles to travel down the driveway. She illustrated the topography of the land and pointed out that the fence ran at ground level along their property. She reiterated that there were no sight distance issues with the fence along their property.

Mr. Secas came forward and addressed issues regarding the pipe stem driveway. He stated that the County concluded that the subdivision was in compliance with the Zoning Ordinance. He explained that as a result of a meeting between the County, the adjacent neighbors and Symphony Meadows, LLC, an agreement was established between the neighbors and the construction company which outlined that the construction company would improve the access along the driveway for the neighbors to the rear and variances would be sought for the fence height issue and the sight distance issue.

Page 660, September 10, 2002, (Tape 1), MITCHELL J. LIAKOS & MELISSA M. BUCKMASTER, VC 2002-HM-098, continued from Page 659

Mr. Secas explained that the mail delivery problems began when the mailman became frustrated with the construction process and asked them to relocate the mailboxes to a better area until the construction was over. He said he believed that the mailboxes could be returned to their original location and the mailman would be able to utilize the turn around and resume delivering the mail.

Chairman DiGiulian closed the public hearing.

Mr. Ribble suggested that the Board defer the decision regarding the case until the variance for Lot 7 was accepted and to schedule both of the hearings for the same date.

Mr. Ribble moved to defer decision regarding VC 2002-HM-098 to November 19, 2002, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Hammack and Mr. Kelley voted against the motion.

Mr. Thomas came forward and stated that the construction of the subdivision caused a water problem in his front yard and he did not want the construction company performing any services on his property.

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Page 660, September 10, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOHN L. BLEDSOE, VC 2002-DR-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 15.0 ft. from rear lot line. Located at 2003 Griffith Rd. on approx. 10,955 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((11)) 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. John Bledsoe, 2003 Griffith Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a detached garage to be located 15.0 feet from the rear lot line. The Zoning Ordinance permits a minimum rear yard of 17.0 feet; therefore, a variance of 2.0 feet was requested.

Mr. Bledsoe presented the variance request as outlined in the statement of justification submitted with the application. He stated that the topography of the lot and the number of mature trees prevented the location of the proposed garage in any other location on the property. He said the garage would provide shelter for his vehicles and additional storage space. He explained that the garage would be in character with the neighborhood and that there were several similar variances that had been approved in the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-DR-101 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN L. BLEDSOE, VC 2002-DR-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 15.0 ft. from rear lot line. Located at 2003 Griffith Rd. on approx. 10,955 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((11)) 16. 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 10, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 (detached garage) as shown on the plat prepared by Brian W. Smith, dated April 18, 2002, as revised through May 23, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage shall be architecturally compatible with existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

Page 662 September 10, 2002, (Tape 1), JOHN L. BLEDSOE, VC 2002-DR-101, continued from Page 661

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley and Mr. Ribble were not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 662 September 10, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CONCEPTS 21, LTD., SP 2002-SU-034 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit an indoor recreation facility. Located at 4312 Chantilly Place Shopping Center on approx. 9,200 sq. ft. of land zoned C-6 and WS. Sully District. Tax Map 44-1 ((9)) F1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Randall Briggs, 9179 Red Branch Road, Columbia, Maryland, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. The applicants requested a special permit to allow a commercial recreation use to establish an indoor recreational laser tag and activity center with a snack bar. No additional construction to the existing building was proposed. The proposed estimated number of patrons would be approximately 60 per day during the peak demand period which was anticipated to be primarily on weekends, late week and early weekends. The proposed number of employees was 6 full time and part time employees on site. The proposed hours of operation were 10:00 a.m. to 10:00 p.m. Sunday through Thursday and 10:00 a.m. to midnight Fridays and Saturdays. Staff recommended approval of the application.

Mr. Briggs presented the special permit request as outlined in the statement of justification submitted with the application. He explained the rules of play for laser adventure.

Chairman DiGiulian called for speakers.

Noah Madison, no address given for the record, came forward to speak in support. He explained that he worked for the owners of the shopping center in which the subject application would be located. He said he had visited one of applicants' other locations in Maryland and it was a clean and well run establishment. He stated that the use would enhance the shopping center and would be an asset to the Dulles Exposition.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-SU-034 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CONCEPTS 21, LTD., SP 2002-SU-034 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit an indoor recreation facility. Located at 4312 Chantilly Place Shopping Center on approx. 9,200 sq. ft. of land zoned C-6 and WS. Sully District. Tax Map 44-1 ((9)) F1. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a special permit.
3. The facility would benefit the community.
4. The applicants made a presentation to the community that resulted in a positive outcome.
5. The facility will be very busy on weekends and will attract a number of special events.

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, Concepts 21, Ltd. and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land. Other by-right, special exception and special permit uses may be permitted on the site without special permit amendment, if such uses do not affect this special permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Huntley, Nyce and Associates., dated April 6, 1991, as revised through November 1, 1999, and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modification to the approved special permit may be permitted pursuant to Par. 4 of Sect.8-004 of the Zoning Ordinance.
4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. Any and all signs and awnings associated with this use that are affixed to the building shall be architecturally compatible with the shopping center and shall be subject to and in compliance with Article 12 of the Zoning Ordinance.
6. Parking spaces shall be provided in accordance with Article 11 of the Zoning Ordinance as determined by the Department of Public Works and Environmental Services (DPWES). All parking for the use shall be on-site.

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 4-0. Mr. Hammack, Mr. Kelley and Mr. Ribble were not present for the vote.

Page ~~664~~ September 10, 2002, (Tape 1), CONCEPTS 21, LTD., SP 2002-SU-034, continued from Page ~~663~~

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page ~~664~~ September 10, 2002, (Tape 1), Scheduled case of:

9:30 A.M. DELANO CONTAINER SERVICES, INC., A 2001-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a recycling center without site plan approval or a Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 5520 Vine St. on approx. 18,703 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 10. (moved from 4/24/01 and 8/7/01) (Deferred from 11/13/01) (admin moved from 3/5/02)

William E. Shoup, Deputy Zoning Administrator, explained that the County had entered into an agreement of compliance with the appellants and they withdrew the appeal based on that agreement.

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Page ~~664~~ September 10, 2002, (Tape 1), Scheduled case of:

9:30 A.M. JIMMIE AND MARGIE WALKER, A 2002-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a contractor's office and shop, storage yard, junk yard and a heavy equipment and specialized vehicle sale, rental and service establishment and that such activity has been established in violation of various Zoning Ordinance provisions. Located at 7801 Cinder Bed Rd. on approx. 1.06 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 20. (Def. from 4/30/02)

William E. Shoup, Deputy Zoning Administrator, explained that there was an error in the posting of the property and as a result the appeal could not go forward.

Mr. Hart moved to defer A 2002-LE-001 to October 15, 2002, at 9:30 a.m. Ms. Gibb 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 ~~664~~ September 10, 2002, (Tape 1), Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance provisions. Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on approx. 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and 11/27/01) (continued from 1/22/02 and 4/30/02) (Def. for Dec. Only from 6/4/02) Tax Map 71-2 ((1)) 12A.

Chairman DiGiulian recused himself from the meeting as his firm did the survey for the property in question.

William E. Shoup, Deputy Zoning Administrator, stated that the appeal had been deferred several times and staff believed that there was a junkyard use on the property although there had been substantial clean up since the first hearing. He illustrated by photographs that were taken September 9, 2002, the debris that still remained on the property which constituted a junkyard use. He stated that the County had entered into a consent decree with Mr. Cifuentes, the adjoining property owner, who had agreed to clean up the appellants' property because the items that were placed on the property were overflow from his property. Mr. Shoup recommended deferral of the case to February of 2003 to allow Mr. Cifuentes some time to clean up the property.

Kenneth Sanders, agent for the appellants, submitted photographs of the property to illustrate the clean up that had been done. He contended that the violations had been cleared and there was no junkyard use on



the property although there may be a few items still scattered on the property. He said one of the violations was for a junkyard use in the floodplain and currently there were no items in the floodplain.

Ms. Gibb asked if the poured cement was still on the property. Mr. Sanders replied that many of the chunks of cement had been removed from the property. Ms. Gibb asked if the chassis still remained on the property. Mr. Sanders stated that it was still on the property.

Mr. Hart stated that Mr. Cifuentes was under a court order to remove all junkyard type items from the property and he asked the appellants why they wouldn't want to wait until February to see if Mr. Cifuentes followed through on the clean up order. Mr. Sanders stated that it was impossible for the appellants to restrict Mr. Cifuentes from placing junkyard type items on the property. He reminded the Board that the only entrance to the property was through the Cifuentes property. He requested that the Board make the decision that the property was not a junkyard.

Mr. Hart asked if Zoning Enforcement and the appellants ever met together at the site. Mr. Sanders replied they had not. Mr. Hart suggested doing so.

Mr. Pammel asked Joe Bakos, Senior Zoning Inspector, what percentage of the lot was cleared. Mr. Bakos replied that approximately 95% of the site had been cleared since July of 2001.

Mr. Pammel stated that the appellant was an unfortunate victim and at least 95% of the site had been cleared; therefore, there was no junkyard use. He said Mr. Cifuentes was under order to remove whatever items that remained on the property.

Mr. Hammack asked Mr. Bakos how many square feet the remaining 5% consisted of and how much was located in the floodplain. Mr. Shoup illustrated by photograph the floodplain line. Mr. Bakos informed the Board of the different types of items still remaining in the floodplain.

Mr. Shoup stated that even though the remaining junkyard items were scattered about the property, grass would not be able to grow and the property would not be restored. He contended that the subject of the appeal was the Notice of Violation for a junkyard use and the evidence revealed that the property still met the definition of a junkyard.

Mr. Hammack asked if the appellants could be served with another violation if more debris was placed on the property. Mr. Shoup replied that would be possible if the current violations had been dealt with and the property had been properly cleared prior to any additional dumping of debris.

Mr. Hammack asked the appellant if there was any debris in the floodplain. Mr. Sanders replied that there was not. Mr. Hammack asked Mr. Bakos if there was any debris in the floodplain. Mr. Bakos replied that there was.

Ms. Gibb stated that the appellant needed to provide more proof that there was no debris in the floodplain.

Mr. Pammel moved to reverse the decision of the Zoning Administrator and to clear the remaining Zoning Violations. The motion failed for lack of a second.

Mr. Hart stated that there was immense difficulty in assessing the situation from a distance and it was not the Board's responsibility to decide what percentage of the area cleared was enough to void the violations. He said the court order issued to Mr. Cifuentes could solve the problem and he suggested that the Board wait until February of 2003 to see if the court order was fulfilled.

Mr. Hammack stated that none of the photographs adequately illustrated what debris was left in the floodplain. He suggested that the County and the appellants meet and come to an agreement on what needed to be done to resolve the impasse regarding the junkyard use.

Mr. Pammel suggested that the appellants look into installing a barrier between the properties to prevent the placement of any additional debris on the property in question.

666

Page 666, September 10, 2002, (Tape 1), T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 665

Mr. Hart moved to defer decision regarding A 2001-LE-023 to February 4, 2003, at 9:30 a.m. Ms. Gibb 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 666, September 10, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MEHRAN HOUSHANGNEJAD, A 2002-BR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is parking a wrecker in the R-3 District which exceeds the 12,000 pound gross weight limit for wreckers that are allowed to be parked in a residential district, in violation of Zoning Ordinance provisions. Located at 5520 Hinton St. on approx. 10,856 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (11) 16. (Def. From 6/4/02) (cont'd from 7/30/02)

The appellant was not present for the hearing.

Mr. Pammel moved to dismiss appeal A 2002-BR-008 due to the appellant's lack of presence. Mr. Hart 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 666, September 10, 2002, (Tape 1), After Agenda Item:

Approval of Revised Plat  
Claiborne and Poul Eldrup-Jorgensen, VC 01-Y-046

Mr. Hart moved to approve the revised plat for VC 01-Y-046. 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 666, September 10, 2002, (Tape 1), After Agenda Item:

Approval of May 21, 2002 Minutes

Mr. Pammel moved to approve the minutes. 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 666, September 10, 2002, (Tape 1), After Agenda Item:

Board of Zoning Appeals Meeting Dates for the First Six Months of 2003

Mr. Pammel moved to approve the meeting dates. Mr. Hart 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 666, September 10, 2002, (Tape 1), After Agenda Item:

Revocation Request from John Murphy  
Annanda Buddhist Mediation Institute  
SP 98-P-051 and VC 01-P-042

Susan Langdon, Chief, Special Permit and Variance Branch, explained that Bruce Miller, Senior Zoning Inspector, visited the site and had compiled a report for the Board.

Page 667, September 10, 2002, (Tape 1), After Agenda Items, continued from Page 666 . . .

Mr. Miller informed the Board that he visited the property on August 25, 2002, and that day was the Temple's picnic so there was not much activity on-site. He said there were approximately 20 cars parked on the property that day and there was a parking manager on-site. He stated that there were two people praying on-site and one was in the sanctuary and one was in a room for the deceased. He stated that the lead monk was on the property as well as 18 other people preparing food for the picnic. Mr. Miller reported that he performed a second inspection on September 8, 2002, and at that time there were 23 cars on the property and four of them were identified as being for use by the Temple. He stated that there were 33 worshipers in the sanctuary attending a prayer session; there were 12 children in the library with one adult supervisor, five other women on the property who appeared to be serving an administrative role and two parking attendants. He said three additional people arrived as he was leaving and they appeared to be bringing food to the temple for the noon prayer. He stated that the parking attendants promptly closed the driveway entrance at noon and did not let anyone else onto the property. He said there were no cars parked on Annandale Road.

Ms. Langdon informed the Board that there was no Non-RUP approved for the use as a church and the parking spaces to make a total of 30 had not yet been implemented. She said the special permit had not been established.

Lynne Strobel, agent for the applicants, stated that she had represented the applicant for the special permit and the matter had just recently been brought to her attention. She said she would be speaking with the applicant to find out what was going on. She stated that she had given them clear instruction that they were not supposed to be holding religious services.

The Board discussed the option of conducting a revocation hearing but decided to let Zoning Enforcement reinforce compliance of the Zoning Ordinance.

Ms. Strobel asked if a Notice of Violation had been served. Mr. Miller replied that a Notice of Violation was being reviewed and had not yet been issued.

Mr. Hammack moved to deny the revocation request without prejudice. Ms. Gibb 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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Mr. Hammack moved to that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

The Board recessed at 12:39 p.m. and reconvened at 1:06 p.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. 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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As there was no other business to come before the Board, the meeting was adjourned at 1:07 p.m.

Minutes by: Lori M. Mallam

Approved on: June 17, 2003

  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 17, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; James Hart; Robert Kelley; James Pammel and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m.

Mr. Hart moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Ms. Gibb and 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.

The meeting recessed at 9:02 a.m. and reconvened following the executive session.

Mr. Hart 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. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 669 September 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TAURUS ENTERPRISES, INC., VC 2002-PR-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 41.0 ft. Located at 7607 Idylwood Rd. on approx. 40,380 sq. ft. of land zoned R-3. Providence District. Tax Map 40-3 ((1)) 21A.

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 Fox, Agent, replied that it was

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit subdivision of the application parcel into two lots with proposed Lot 2 having a lot width of 41.0 feet. A minimum lot width of 80.0 feet is required by the Zoning Ordinance in the R-3 District; therefore, a variance of 39.0 feet was requested for Lot 2. Both lots were proposed to be developed with single family detached dwellings and to gain access to Idylwood Road via a shared driveway on the east side of the property.

Stephen Fox presented the variance request as outlined in the statement of justification submitted with the application. He explained that the lot was long and narrow and only had one house. Mr. Fox said that if the lots were positioned via Idylwood Road on its other dimension, Lot 2 would meet the Ordinance requirements and be developable without the need for a variance. He said that the population density in the area was low with only 2.5 dwelling units per acre. Mr. Fox stated that the church wanted the driveway located on the far side of the lot and that had been done. He noted a letter sent by a neighbor concerned with the types of houses to be built and submitted pictures of the proposed dwellings.

Mr. Hart asked Mr. Fox what the antenna for HAM Radio shown on the plat was in reference to. Mr. Fox stated that was owned by the existing owner and would be removed.

Mr. Hart asked Mr. Fox to explain the 100-foot timbers shown on the plat. Mr. Fox explained that they were an existing condition that would be removed.

Chairman DiGiulian called for speakers.

Lily Ruckstuhl, 7545 Idylwood Road, came forward to speak in opposition of the proposed variance. She stated that the second proposed lot had no road access and the lot size was inadequate. Ms. Ruckstuhl stated that she objected to the building of two large houses on the lots.

Chairman DiGiulian asked Mr. Fox for rebuttal, and Mr. Fox stated that he had already addressed the issues raised by the speaker.

Mr. Pammel moved to approve VC 2002-PR-093 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

TAURUS ENTERPRISES, INC., VC 2002-PR-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 2 having a lot width of 41.0 ft. Located at 7607 Idylwood Rd. on approx. 40,380 sq. ft. of land zoned R-3. Providence District. Tax Map 40-3 ((1)) 21A. 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 17, 2002; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
- 3. The narrow configuration of the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of Lot 21A as shown on the plat prepared by Walter L. Phillips, Incorporated dated April 18, 2002, as revised through July 24, 2002. 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. Management (SWM) and Best Management Practices (BMPs) shall be provided as shown on the variance plat and in accordance with the requirements of the Public Facilities Manual as approved by DPWES. A written disclosure shall be placed in the purchase contract and in the deed for each lot and recorded among the land records of Fairfax County in a form approved by the County Attorney, which:
  - Notifies the landowner of the existence and maintenance responsibility for the rain garden.
  - Sets forth maintenance standards for the rain gardens as outlined in Attachment A.
3. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 1 and 2 over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement to be recorded at time of subdivision plat approval for the Application Property. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.
4. The limits of clearing and grading shall be as shown on the variance plat and the minimum amount necessary to provide for the development shown on the approved variance plat and shall depict the limits of clearing to preserve as much vegetation possible, as determined by the Urban Forestry Division of DPWES.
5. The applicant shall install supplemental plantings, species as determined by the Urban Forestry Branch, DPWES, along the perimeter of the property as shown on the variance plat to serve as a visual screen between the subject property and the adjacent properties.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 25, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 671, September 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      MARIA MCMURRAY, VC 2002-MV-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard. Located at 9300 Davis Dr. on approx. 36,257 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 27.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Maria McMurray, 9300 Davis Drive, Lorton, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a detached garage as an accessory structure to be located in the minimum required front yard. The Zoning Ordinance does not permit any accessory structures in a minimum required front yard of any lot.

Ms. McMurray presented the variance request as outlined in the statement of justification submitted with the application. She stated that the size of the proposed garage was reduced as an outcome of a previous hearing. Ms. McMurray said the garage would be approximately 100.0 square feet less in size than the previous request. She stated that the garage was moved 7.0 feet further from the street. Ms. McMurray explained that was the maximum distance the garage could be moved because of a septic system. She stated that the proposed location of the garage was the only place it could be constructed because of the topography of the lot and the current location of the driveway. Ms. McMurray stated that the present garage did not allow the opening of the car doors. She said the garage would be in harmony with the rest of the home.

Mr. Hart asked the applicant if the garage was a two or three car garage. Ms. McMurray stated that it was a two car garage.

Mr. Hart asked the applicant if the door would be facing the street or the house. Ms. McMurray stated that the garage would be facing the house.

Mr. Hart asked the applicant why the garage was not closer to the AT&T easement. Ms. McMurray stated that it was because of the septic field.

Mr. Hart asked the applicant if there was a minimum distance the garage had to be located from the septic field. Ms. McMurray stated that there was.

Mr. Hart asked the applicant why the garage could not be moved back more. Ms. McMurray explained that they could not move any closer to the septic field.

Mr. Hart asked the applicant if the garage was uphill from the septic field. Ms. McMurray said that was correct.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-MV-094 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARIA MCMURRAY, VC 2002-MV-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard. Located at 9300 Davis Dr. on approx. 36,257 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 27. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 17, 2002; 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 the granting of a variance.
3. The lot has double front yards.
4. There are some topographical issues.
5. The house is placed fairly close to the street.
6. The location of the septic field and the electrical easement restrict the buildable area of the lot.
7. The applicant has made significant changes since the original application in reducing the size of the structure and moving it further from the front line.
8. There would be no significant negative impact.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the accessory structure (detached garage) shown on the plat prepared by Christopher Consultants, dated April 16, 2001, as revised through May 31, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time

requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 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 September 25, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 674 September 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from front lot line and angle of bulk plane less than 45 degrees and to permit existing structure to remain 24.0 ft. and 23.0 ft. from front lot line. Located at 6477 Lincolnia Rd. on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with SPA 75-M-060-2). (admin moved from 7/2/02, 7/16/02 and 7/30/02 per appl. req) (cont'd from 8/13/02)

9:00 A.M. TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 75-M-060 previously approved for a place of worship to permit addition of land area, building additions and site approved modifications. Located at 6477 Lincolnia Rd. on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with VC 2002-MA-060). (admin moved from 7/2/02 7/16/02 and 7/30/02 per appl. req) (cont'd from 8/13/02)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She explained that the request was continued from August 13, 2002, Ms. Josiah said staff had issued an addendum to the staff report that stated upon further review, it had been determined that sight distance was not an issue with the construction of the proposed addition. She said staff also reiterated that the Department of Transportation was satisfied that the revised parking lot met the standards. Ms. Josiah stated that a revised plat was submitted that showed the proposed brick wall along the drive isle rather than along the property line. She stated that the plat also showed the existing vegetation on Lot 26B. Ms. Josiah said staff had revised the proposed development conditions to reflect the new plat date and to include a requirement for transitional screening on Lot 26B. She said staff also proposed that number six of the development conditions be modified to state that the portion of the wall adjacent to Lincolnia Road may be modified in length or height to meet sight distance requirements. Ms. Josiah noted that the construction of the proposed addition and approval of that portion of the variance eliminated 16 existing parking spaces which were necessary. She stated that a use requiring special permits should be able to contain all parking on site to mitigate the impact of that use on the surrounding uses. She said the proposed addition did not meet yard or angle of bulk plane requirements; therefore, staff recommended denial of both applications.

Mr. Hart noted that the change described, in reference to the wall, was not seen on the plat. Ms. Josiah stated that flexibility should be allowed in case of a sight distance issue. She stated that it was not included in the development conditions.

Ms. Strobel presented the request as outlined in the statement of justification submitted with the application. She explained that a church had been in the location since the late 1860's. Ms. Strobel said the most important part of the application was to provide on-site parking to the church. She noted that if the Phase 2 building was not built and the 16 parking spaces were retained, it would not seem adequate to address the needs of the church. Ms. Strobel stated that they were trying to exceed the County parking requirement with 61 spaces on site. She said sight distance was adequate at the entrance. Ms. Strobel explained that the retaining wall would be brick. She said the wall was to be moved in to allow existing vegetation to remain. Ms. Strobel said there was adequate parking for a regular Sunday service and there was offsite parking on special occasions. Ms. Strobel explained that the Phase 2 building would not be constructed for several

Page ~~675~~ September 17, 2002, (Tape 1), TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060, and TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2, continued from Page ~~674~~

years and would retain the existing 16 parking spaces and allow the proposed landscaping to mature.

Mr. Hart asked Ms. Strobel if the line that was staked was for the retaining wall or the property line. Ms. Strobel replied that it was for the property line.

Mr. Hart asked Ms. Strobel if they were leaving the existing vegetation in its current location. Ms. Strobel stated that they were leaving it and would provide supplemental vegetation.

Mr. Hart asked Ms. Strobel if she was in agreement of the new development conditions. She replied that she was.

Mr. Hart asked if there was a problem with parking on the service drive. Ms. Strobel stated that was not a problem and there were still certain areas that the church could park.

Mr. Hart asked Ms. Strobel if the surrounding neighbors were in agreement with the resolution of the retaining wall. She said the wall was moved in and that they were trying to address the situation.

Mr. Hart noted that during rush hour it was difficult to turn out of the neighborhood because of the traffic and the obstruction of vision.

Mr. Hart asked Ms. Langdon about the service station near the church. Ms. Langdon stated that there was a special exception application on the property but it did not effect the proposed applications for the church.

Chairman DiGiulian called for speakers.

Jim Kitchen, Barcroft Square Homeowner's Association, came forward to speak in support of the application. He stated that there was concern about the traffic on Lincolnia. Mr. Kitchen said they had no objection to the retaining wall. He said that there were questions on whether the church traffic could exit onto Old Columbia Pike. Mr. Kitchen noted that there was a church property that abutted Holly Oak Drive. He stated that the house on the property could be removed and the church could possibly exit onto Holly Oak Drive. Mr. Kitchen noted that there was a petition signed by homeowners abutting the property but it had nothing to do with the homeowner's association.

Ms. Strobel explained that there was an existing gravel road but it could not be improved without encroaching on the cemetery.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2002-MA-060 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from front lot line and angle of bulk plane less than 45 degrees and to permit existing structure to remain 24.0 ft. and 23.0 ft. from front lot line. Located at 6477 Lincolnia Rd. on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with SPA 75-M-060-2). (admin moved from 7/2/02, 7/16/02 and 7/30/02 per appl. req) (cont'd from 8/13/02). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 17,

2002; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the existing church and dwelling and proposed addition shown on the plat prepared by Burgess & Niple dated August 2001, as revised through September 9, 2002, submitted with this application and is not transferable to other land.
- 2. The proposed addition shall consist of materials that are the same style, material and color as the existing structure. Photos and/or colored elevations that indicate the existing and proposed material, style and color shall be provided to DPWES at the time of building permit issuance to demonstrate consistency.
- 3. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 September 25, 2002. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve SPA 75-M-060-2 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 75-M-060 previously approved for a place of worship to permit addition of land area, building additions and site modifications. Located at 6477 Lincolnia Rd. on approx. 4.31 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((1)) 4, 4A, 5 and 6; 61-3 ((3)) 26B. (Concurrent with VC 2002-MA-060). (admin moved from 7/2/02 7/16/02 and 7/30/02per appl. req) (cont'd from 8/13/02). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 17, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a special permit.
3. The present zoning is R-2.
4. There is no increase in the number of seats in the church.
5. The applicant has consulted with the neighbors and taken their concerns into consideration.
6. The church has been in its present location over a long period of time.

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, 6477 Lincolnia Road (4.31 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 Burgess & Niple dated August 2001, as revised through September 9, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be three hundred twenty (320). A minimum of 95 parking spaces shall be provided in the areas shown on the Special Permit Amendment Plat. All parking for the church shall be on site.
6. The transitional screening requirement shall be modified along the southeastern property line adjacent to the drive aisle as shown on the special permit amendment plat to allow for a two-thirds (2/3) reduction in width in conjunction with the construction of a 7.0 foot high brick wall. That portion of the wall directly adjacent to Lincolnia Road may be modified in length or height if determined necessary to meet sight distance requirements, as determined by VDOT and DPWES. The transitional screening requirements shall be waived along the southern and western and northern property lines, west of the proposed parking lot. Transitional screening shall be provided along the eastern and southern lot lines in the area of the proposed parking lot, as shown on the special permit amendment plat. The exact type, location, size and number of plantings shall be subject to the review and approval of the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES).
7. The barrier requirement shall be waived along the southern lot line as outlined in Condition 6, the northern and western lot lines.
8. Interior and peripheral parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance and as determined by DPWES.
9. Any proposed new lighting on the site shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed 12 feet and shall be full cut-off lights.
  - The lights shall be of a design which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, except for security lighting directly adjacent to the building.
  - There shall be no up-lighting of any of the proposed or existing buildings.
10. If Stormwater Management/Best Management Practices (BMPs) requirements are not waived, such facilities shall be provided outside the transitional screening areas and cemetery as shown on the plat and as determined by DPWES. The applicant shall enter into an agreement with DPWES if determined necessary for regular maintenance and inspection for the underground stormwater

management facility as shown on the special permit amendment plat, if it is required to be constructed by DPWES.

- 11. Tree cover shall be provided in Article 13 of the Zoning Ordinance. Final determination regarding compliance with these requirements shall be as determined by DPWES at the time of site plan review.
- 12. All signs on the property shall conform to the provisions of Article 12.
- 13. The proposed addition shall consist of materials that are the same style, material and color as the existing structure. Photos and/or colored elevations that indicate the existing and proposed material, style and color shall be provided to DPWES at the time of building permit issuance to demonstrate consistency.
- 14. The gate located on Lot 26B shall be reconstructed such that it swings inward to the parking lot, rather than outward into the lane of travel on Old Columbia Pike. This shall be accomplished prior to the issuance of a Non-Residential Use Permit for the proposed building addition.
- 15. The dwelling on site shall only be used for residential purposes and only by an employee or caretaker of the church. If in the future the dwelling is not needed for such purpose, it may be removed.
- 16. The applicant shall dedicate right-of-way along Lincolnia Road, as shown on the special permit amendment plat. The right-of-way dedicated shall include and be located at least one foot beyond the existing wood curb on the site, as determined by VDOT.
- 17. Notwithstanding what is shown on the special permit amendment plat, the applicant shall connect the sidewalk system to the existing sidewalks. A public access easement shall be provided over the sidewalks along both frontages to facilitate pedestrian access.
- 18. The parking lot on the Lot 26B shall be used only for church related purposes. The parking lot entrance shall be equipped with a gate, as outlined on Condition 14, which shall be kept locked when the parking lot is not in use by the church.
- 19. Lighting for the parking lot on Lot 26B shall consist of low level pedestal lights with a maximum height of 4 feet, which shall be operated manually for use of the parking lot in conjunction with church activities. The parking lot shall not be lighted at night when not in use for church related activities.
- 20. Notwithstanding what is shown on the plat, transitional screening shall be provided along the northern, eastern and western lot lines of Lot 26B. Transitional screening shall be modified along the southern lot line to reflect the width from the edge of the pavement to the lot line. The exact type, location, size and number of plantings shall be subject to the review and approval of the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES).

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 680 September 17, 2002, (Tape 1), TRUSTEES OF MT. PLEASANT BAPTIST CHURCH, VC 2002-MA-060, and TRUSTEES OF MOUNT PLEASANT BAPTIST CHURCH, SPA 75-M-060-2, continued from Page 679

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 25, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 680 September 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. WALTER A. PEZET, VC 2002-DR-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.0 ft. from side lot line and 18.0 ft. from rear lot line. Located at 6440 Gerard Ct. on approx. 10,844 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((14)) 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. Walter A. Pezet, 6440 Gerard Court, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator made staff's presentation as contained in the staff report. The applicant requested variances to permit construction of a garage addition to be located 5.0 feet from the side lot line and room expansions to the rear of the dwelling to be located 18.0 feet from the rear lot line. The minimum side yard for the R-3 District is 12.0 feet and 25.0 feet for the rear yard; therefore, variances of 7.0 feet for the garage addition to the side and 7.0 feet for the room expansions to the rear were requested.

Mr. Pezet presented the variance request as outlined in the statement of justification submitted with the application. He explained that the subject property was a pie shaped lot measuring 10,844 square feet. Mr. Pezet said there was a 25-foot storm sewer easement on the south side of the lot. He stated that the builder situated the house on the lot so it would fit and clear the easement and setback to the rear. Mr. Pezet stated that they were increasing the size of the rooms to match current building norms for room size. He explained that they wanted to change their one car carport into a two car garage. Mr. Pezet stated that the finished product would look like it was originally part of the house. He noted that it would not be a detriment to the neighbors or the County. Mr. Pezet stated that it would enhance property values in the subdivision. He said he had written support from the neighbors.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-PR-100 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER A. PEZET III, VC 2002-DR-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.0 ft. from side lot line and 18.0 ft. from rear lot line. Located at 6440 Gerard Ct. on approx. 10,844 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((14)) 11. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 17, 2002; 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 the granting of a variance.
3. The lot has an exceptional shape.
4. There is a sewer easement which runs across a portion of the lot which makes it impossible to put this addition in any other location.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the additions as shown on the plat prepared by Kenneth W. White, dated August 19, 1993, as revised by Rebecca L.G. Bostick, dated June 26, 2002, as 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.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Page 682 September 17, 2002, (Tape 1), WALTER A. PEZET, VC 2002-DR-100, continued from Page 681

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 25, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 682 September 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JEANNE B. HERRICK, SP 2002-PR-033 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 2207 Arden St. on approx. 8,613 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4 ((24)) (2) 10.

Chairman DiGiulian noted that the public hearing was administratively moved to October 29, 2002, at the applicant's request.

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Page 682 September 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MOHAMMAD HUMAYN SULTANY, SP 2002-LE-030 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6518 Delia Dr. on approx. 5,661 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((8)) 42. (Admin. moved from 8/6)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mohammad Sultany, 6518 Delia Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a modification to the limitations on the keeping of animals to allow 14 exhibition pigeons to remain on the property. The Zoning Ordinance permits the keeping of racing, homing or exhibition pigeons as an accessory use but only on lots 10,000 square feet or more in size. The subject property is 5,661 square feet; and therefore, did not meet the minimum requirements of the Zoning Ordinance. The pigeons were sheltered by a 42 square foot structure. The birds were fed north of the pen.

Mr. Hart asked Ms. Stanfield if fancy pigeons were exhibition pigeons. Ms. Stanfield stated that they were.

Mr. Hart asked staff if the Board allowed any exhibition pigeons on a lot this small before this application. Susan Landon, Chief, Special Permit and Variance Branch, stated that there was an application for homing pigeons but she did not know the size of the lot.

Mr. Hart asked Ms. Langdon if the application was granted. Ms. Langdon stated that it was.

Mr. Hart asked Ms. Langdon if she knew how many birds were on the previous application. She stated that she did not.

Mr. Sultany and his son presented the variance request as outlined in the statement of justification submitted with the application. He explained that they had owned the pigeons for five years. He said that the pigeons were their pets. Mr. Sultany asked the Board if they could keep the current number of pigeons and not increase the number that they currently owned. Mr. Sultany stated that it would be difficult to get rid of the pigeons.

Mr. Kelley asked the applicant what was the life expectancy of a pigeon. Mr. Sultany stated that it was approximately ten years. He stated that the youngest bird was two years old.

Mr. Kelley asked the applicant if they had received complaints from any neighbors. Mr. Sultany said that their next door neighbors stated that they did not like the birds but not until five years after the birds had been in possession of the Sultany's. He explained that there had been previous problems with neighbors pertaining to parking. Mr. Sultany stated that they had a petition signed by many of the neighbors in support of the application.

Page 683, September 17, 2002, (Tape 1), MOHAMMAD HUMAYN SULTANY, SP 2002-LE-030, continued from Page 682

Ms. Gibb asked the applicant if the birds flew into the neighbor's yards. Mr. Sultany stated that the birds were kept caged during the day and were let out of the cage in the evening. He explained that five of the pigeons could not fly and that the remainder did fly on occasion into the neighbors' yards. Mr. Sultany said they would agree to clip the bird's wings in order to keep the birds on their property.

Mr. Hart asked the applicant if the pigeons bred. Mr. Sultany stated that they had in the past but they did not anymore.

Mr. Hart asked if there was electricity or plumbing in the shed where the birds were kept. Mr. Sultany stated that there was.

Mr. Hart asked staff if there was a building permit required for the shed. Ms. Stanfield stated that the dimensions for the shed were below the minimum required for a building permit. She stated that plumbing and electrical permits would be required.

Mr. Sultany explained that the water and electricity came from the house and was not located in the shed.

Mr. Hart asked the applicant if he had reviewed the proposed development conditions. He stated that he was in agreement with the development conditions.

Chairman DiGiulian called for speakers.

Donald Higham, 6517 Joyce Road, came forward to speak in opposition of the requested special permit. He submitted a photograph of the structure that the pigeons were kept in. Mr. Higham explained that he had built an accessory structure and that the pigeons would land on it. He explained that at different times during the day the pigeons would be on his property and other adjoining properties. Mr. Higham stated that there was a bad smell coming from the applicant's rear yard. He explained that there was a permanent cord that went from the applicant's house into the shed for the pigeons.

Mr. Hart stated that the structure containing the pigeons looked much larger than what was shown on the plat. Ms. Stanfield stated that she had made a site visit and the structure seemed to be the same as shown on the plat, but she did not measure.

Rebecca Goodyear, Zoning Enforcement Division, stated that the structure was approximately 125 square feet.

Mr. Hart asked Ms. Goodyear if the structure shown in the photograph was the structure she had inspected. Ms. Goodyear stated that it was.

Lawrence Zep, previous owner of 6516 Delia Drive, came forward to speak in opposition of the proposed special permit. He stated that the structure did not meet electrical code requirements. Mr. Zep explained that he was the former president of the homeowner's association and got along well with his neighbors. He stated that he had helped the Sultany's make improvements to their home on many occasions. Mr. Zep explained that his house was on the market for sixty days and he could not get a contract on the house. He stated that at the time he took photographs there were more than fourteen pigeons. He stated that he did not want the special permit granted because of the effect it would have on the entire neighborhood.

Bill Driskel, neighbor, came forward to speak in opposition to the proposed special permit. He stated that the homeowner's association was opposed to the special permit. Mr. Driskel submitted a petition signed by neighbors in opposition of the special permit. He voiced his concerns of health, sanitation, and fire safety due to the electrical cord. Mr. Driskel said that he was concerned that the pigeons could be carrying mosquitoes containing the West Nile Virus.

Mr. Sultany stated in his rebuttal that a photograph that was submitted was inaccurate. He said a structure that was contained in the photograph was taken down after they obtained ownership of the property. Mr. Sultany said the cord that led from the house to the structure was only used if work was being done in the rear yard. He explained that the problem in the neighborhood was not the pigeons it was about race.

Chairman DiGiulian closed the public hearing.

Page 684, September 17, 2002, (Tape 1), MOHAMMAD HUMAYN SULTANY, SP 2002-LE-030, continued from Page 683

Mr. Kelley moved to defer decision for SP 2002-LE-030 to October 29, 2002, in order for an electrical inspection to be completed, structural measurements determined, neighbors to submit any additional testimony, and a Health Department Inspection obtained. Mr. Pammel and Ms. Gibb seconded the motion which passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 684, September 17, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MARILDA N. ADAMS, A 2000-DR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has added fill dirt on her property to a depth in excess of eighteen inches and thus altered the natural drainage in the area in violation of Zoning Ordinance provisions. Located at 6312 Old Dominion Dr. on approx. 9,322 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 136. (Moved from 3/6/01, 5/8/01, 6/26/01, 8/25/01 and 1/29/02) (Continued from 3/26/02)

Neither the appellant nor a representative for the appellant was present.

William Shoup, Deputy Zoning Administrator, asked that the Board uphold the decision of the Zoning Administrator.

Mr. Pammel asked staff if there had previously been a public hearing. Susan Epstein, Zoning Administration Division, replied affirmatively.

Mr. Pammel moved to uphold the Zoning Administrator's decision for A 2000-DR-038. Mr. Kelley seconded the motion which passed by a vote of 6-0.

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Page 684, September 17, 2002, (Tape 2), Scheduled case of:

9:30 A.M. IRA AND VIRGINIA COX L.P. & COMMONWEALTH CONSTRUCTION MANAGEMENT, INC., T/A HANDYMAN CONCRETE, A 2002-SU-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing uses to exist on the property which are either not allowed in the I-5 District or have been established without approval of a Site Plan, Building Permits or Non-Residential Use Permits, all in violation of Zoning Ordinance provisions. Located at 13800 Barnsfield Rd. on approx. 7.92 ac. of land zoned I-5 and HD. Sully District. Tax Map 34-2 ((1)) 3A. (Admin moved from 8/13/02)

Mr. Hart gave a disclosure, but indicated it would not affect his ability to participate in the case.

Jayne Reale, Zoning Administration Division, made staff's presentation as contained in the staff report. The property was located on the north side of Barnsfield Road and the entire lot was owned by the co-appellants, Ira and Virginia Cox, and it was sectioned off into ten individual yards. She said each yard was leased by the co-appellants to a different company, which resulted in a number of different uses on the site; two of which were not permitted under any circumstances in the I-5 District; concrete mixing and batching plant and mixed waste reclamation facilities. Ms. Reale stated that according to the National Ready Mixed Concrete Association, there were several kinds of concrete production. Transit mix, also called truck mixed or dry batched concrete, entailed dumping the dry ingredients directly into a truck mixer, adding water, and the concrete could then either be mixed at the job site, in the building materials yard, or in transit. She said the details were included in the staff report, but basically concrete batch plants came in a variety of styles designed to accommodate a variety of markets. Ms. Reale stated that a portable plant consisted of a cement silo and overhead bins for sand and one or two coarse aggregates. In the case of Handyman Concrete, the ingredients were dispatched directly from the silo in the overhead bins into the cement mixing trucks, water was added to the mixture, and by the time the trucks arrived at the job site, the cement was ready to be poured.

Ms. Reale said based on the construction industry's definitions of concrete mixing and batching plants and the fact that Handyman Concrete stored concrete or cement, sand and aggregate on the site, had equipment

that dispensed the material into the trucks and the facility was permanent in nature; Handyman Concrete was a concrete mixing and batching plant. She said all of the uses on the property had been established without site plan, building permit, or a Non-Residential Use Permit approval, with the exception of two building permits which were issued for storage sheds and a Non-RUP which was issued for a permitted contractor's office and shop. Ms. Reale stated that based on industry and Zoning Ordinance definitions, the uses on the subject property included a concrete mixing and batching plant, a mixed waste reclamation facility, a truck rental establishment, and contractors' offices and shops. She said to the extent that any permitted uses such as the truck rental establishment and the contractor's offices and shops were being operated on the property, they were in violation of Zoning Ordinance provisions since there was no site plan, building permit, or Non-RUP approval. Ms. Reale stated that concrete mixing and batching plants were not permitted under any circumstances in the I-5 District. She said Mr. Farrell informed staff that they were not appealing the mixed waste reclamation facility portion of the Notice of Violation, and so that was no longer a part of the appeal. Ms. Reale said she was also informed that the appellant had submitted a minor site plan on September 12, 2002. She said the minor site plan still did not address the fact that Handyman Concrete was a concrete mixing and batching plant which was not allowed under any circumstances in the I-5 District.

John Farrell, Attorney for the appellant, came forward and presented two exhibits for the record, one of which related to the mixed waste reclamation facility. He said they did not dispute that violation notice. Mr. Farrell said the other exhibit was a copy of the filings that were made by the Cox Companies in an attempt to resolve an issue that had been going on for 19 years relating to the minor site plan. He said the Cox Companies and its predecessor, Ira Cox, had done everything in its power to be in compliance with the Zoning Ordinance. Mr. Cox originally started trying to get a site plan for this property in 1983. Mr. Farrell stated that effort was stymied and stonewalled because the County attempted to enforce an illegal provision of its Ordinance that was invalidated in 1979. He said Mr. Cox never proffered to build relocated Barnsfield Road. He said there was a great deal of dispute between VDOT and the County, Department of Transportation, and the Franklin Farm homeowners because the original plan was for that road to go across his client's northerly property line. He said in the meantime, the residents moved in before the road was built, and even though the road was designed originally to be a four-lane divided road to connect Route 28 with West Ox Road, the citizens moved in ahead of time, and they did not want that road connected. He said the solution that staff came up with was for Mr. Cox to apply for and receive a temporary site plan approval, and that's what he received. He received an approval that said that he could continue operating the property and go on the property and have a building materials yard on the property for two years. Mr. Farrell stated that Mr. Cox tried to file an application in 1995 to further extend the temporary site plan, but no response was heard from the County for seven years. He said Mr. Cox then sold his business, Handyman Concrete, to Mr. Tracy. Mr. Farrell indicated that Mr. Odin represented Mr. Tracy and Handyman Concrete. Mr. Farrell argued the issue that the appellant was not operating a mixing and batching plant on the property. (Details are included in the verbatim)

Mr. Hart asked if the silos contain the raw ingredients and the concrete was mixed when the drum went around on the back of the truck. Ms. Reale replied yes.

William Shoup, Deputy Zoning Administrator, replied that he would suggest that to be a batching plant.

Mr. Hart asked if Mr. Farrell was correct that a site plan could not be approved because they did not know where the road would go. Mr. Reale deferred to question to Clinton Abernathy of the Department of Public Works and Environmental Services. Mr. Abernathy replied that there was a process for applying for a waiver or deferral of the road construction which they would coordinate with the Department of Transportation.

Mr. Shoup stated that there was nothing to prevent the appellant from going forward with the site plan approval process.

Mr. Pammel questioned the appellant as to what items were sold on the property. Mr. Farrell indicated that the appellant sold all the products relating to concrete.

Ms. Gibb asked if there were sites that had buildings where big machines operated and would be considered a plant. Steve Mason, Zoning Enforcement, replied that there were plants in Fairfax County that were set up very similar to Handyman Concrete.

Page 686 September 17, 2002, (Tape 2), IRA AND VIRGINIA COX L.P. & COMMONWEALTH CONSTRUCTION MANAGEMENT, INC., T/A HANDYMAN CONCRETE, A 2002-SU-015, continued from Page 685

Mr. Shoup said he thought a concrete mixing and batching plant were considered heavy industrial uses, and those required special designation of uses that typically present some impacts.

The Board members discussed the history of the site plan waiver requests. (Details are included in the verbatim)

Ms. Gibb asked if staff agreed that a determination was made that this was a storage yard. Ms. Reale replied that when someone applied for a Non-Residential Use Permit, no inspections were done and the technicians that issue those permits relied entirely on what the applicant told them and the permit was issued on that basis.

Mr. Odin, representation for Handyman Concrete, came forward that the Board might be able to make a better decision if they were to visit a batching plant and then look at the operation at issue. He suggested there would be a major difference. Mr. Odin submitted photographs of the subject site. He explained to the Board why the operation at issue could not be considered a mixing and batching plant. Mr. Odin introduced Mr. Tracy, the owner of Handyman Concrete.

Mr. Tracy came forward and discussed the meetings held with County staff with regard to site plans. He stated that there had never been any complaint about Handyman's operations. Mr. Tracy stated that he didn't understand why it was necessary to put a small business out of business when it was not hurting anyone.

There were no speakers, so the Chairman allowed staff and the appellants to give additional comments.

Mr. Shoup stated that staff strongly believed that there was a concrete mixing and batching plant on the property.

Ms. Reale gave the industry definitions of a concrete mixing and batching plant and indicated that the definition was also found in the staff report. She said to compare Handyman Concrete to larger mixing and batching plants in the area would be like comparing apples and oranges.

Mr. Farrell stated that the operation has been a building yard since 1994 and every two years, it came in, got another Non-RUP saying it was building material yard and it and it continues to be a building yard.

Ms. Gibb asked if the trucks were not allowed to start spinning until they got out on the road, would it still be a batching plant. Mr. Shoup replied that he thought it would because of all the other equipment and components that were involved. He said staff's position was not that it was mixing and batching when it finally got put into the state of being concrete. He said without the trucks, it was a batching mixing plant.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that his motion would be to defer decision on the appeal. He said he thought the record was clear with respect to what Mr. Farrell and Mr. Odin had indicated. Mr. Pammel said he had a problem with the lack of staff response to their application in 1995. He said he would like to do some more research with respect to concrete plant operations. Mr. Pammel moved to defer the appeal for decision only to November 26, 2002.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 686 September 17, 2002, (Tape 2), Scheduled case of:

9:30 A.M. GARY GRIMM, A 2002-SU-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a contractor's office and shop in the R-1 District in violation of Zoning Ordinance provisions. Located at 13716 Lee Jackson Mem. Hwy. on approx. 15,365 sq. ft. of land zoned R-1 and HC. Sully District. Tax Map 34-4 ((5)) 1.

Page 687, September 17, 2002, (Tape 2), GARY GRIMM, A 2002-SU-018, continued from Page 686

Chairman DiGiulian stated that A 2002-SU-018 had been withdrawn.

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Page 687 September 17, 2002, (Tape 2), After Agenda Item:

Approval of January 29, 2002, March 12, 2002,  
April 2, 2002, and May 28, 2002 Minutes.

Mr. Pammel moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0.  
Mr. Hammack was absent from the meeting.

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Page 687, September 17, 2002, (Tape 2), After Agenda Item:

Approval of September 10, 2002 Resolutions.

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 6-0.  
Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:38 a.m.

Minutes by: Alison Capo

Approved on: September 14, 2004

Regina Horn Corbett  
Regina Horn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 24, 2002. The following Board Members were present: Chairman John DiGiulian; James Hart; Robert Kelley; James Pammel and John Ribble. Nancy Gibb and Paul Hammack were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 689 September 24, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MELVINA TARAZI SAAD, VC 2002-DR-111 Appl. under Sect(ε). 18-401 of the Zoning Ordinance to permit construction of deck 22.5 ft. from front lot line and fence greater than 4.0 ft. in height in front yard of a through lot. Located at 6915 Bonheim Ct. on approx. 10,501 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((52)) 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. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mr. Hart gave a disclosure but indicated that it would not affect his ability to participate in the public hearing.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck 22.5 feet from a front lot line of a through lot. A minimum front yard 30 feet is required; therefore, a variance of 7.5 was requested. A fence greater than 4 feet in height was also requested in a front yard. The Ordinance does not permit fences greater than 4 feet in height in the front yard. Ms. Josiah noted that a revised affidavit had been distributed to the BZA.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She said the request was to permit the construction of a deck 22.5 feet from the front lot line and a fence greater than 4 feet in height in a front yard. Ms. Strobel said the property was a through lot bound on two sides by public streets. She presented photographs reflecting that the front yard looked like a rear yard. Ms. Strobel stated that the applicant met the requirements for a variance. She said a building permit had been issued but later revoked when it was discovered that the lot was a through lot with two front yards. Ms. Strobel stated that the issuance of the building permit was evidence that the condition of the property was unique and was not typically found in daily construction. She said the 6 foot fence was needed for privacy and screening.

Mr. Hart asked if the fence would affect the drain function reflected on the plat. Ms. Strobel stated that she believed that was an easement and the applicant would have to respect the conditions of that easement. She said water could go under the fence.

Chairman DiGiulian called for speakers.

Kevin McCarthy, adjacent neighbor, came forward and expressed his support of the application.

Sandra Feeney, 6909 Ridgedale Court, came forward to speak in opposition to the application. She presented photographs reflecting the view of the rear lot. Ms. Feeney stated that she was not in opposition to the deck, but asked that the trees that were currently in the Virginia Department of Transportation's right of way not be disturbed in the construction of the fence. She asked that the fence also conform in size, design, style and color and that the applicant not construct a chain link fence.

Mr. Hart asked Ms. Feeney if she was in opposition to the height of the fence. She replied no.

Ms. Strobel stated in her rebuttal that the applicant had no control over the trees in the right of way, but she anticipated that they would remain. She said the subdivision was subject to covenants and had an architectural Review Board and she felt comfortable that whatever was constructed would be appropriate and in keeping with the character of the neighborhood. Ms. Strobel requested a waiver of the 8-day waiting period.

Mr. Pammel moved to approve VC 2002-DR-111 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

MELVINA TARAZI SAAD, VC 2002-DR-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 22.5 ft. from front lot line and fence greater than 4.0 ft. in height in front yard of a through lot. Located at 6915 Bonheim Ct. on approx. 10,501 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((52)) 9. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 2002;

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot has double front yards and is shallow with a depth of 115 feet.
3. The owner does not have an adequate rear yard area for the enjoyment of the property.
4. The installation of a deck and a fence 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 the deck and fence shown on the plat prepared by Charles P. Johnson & Associates, Inc., dated May 2002, as signed July 16, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. Due care and diligence shall be taken by the applicant in the installation of the fence in the area of the property fronting on Ridgedale Court to protect the existing vegetation.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Ribble seconded the motion, which carried by a vote 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 24, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 691, September 24, 2002, (Tape 1), Scheduled case of:

9:00 A.M. FAIR OAKS GLEN HOMEOWNERS ASSOCIATION, PHILLIP N.P. NGUYEN, MILAGROS V. NGUYEN, TRUNG H. NGUYEN, HANH B. QUACH, GODANDARAMAN AND RAMANI RADHAKRISHNAN, PHILIP C. KLETT, TERESA L. PRICE, DEBRA HANNEMAN AND PHILIPPE S. JEAN BAPTISTE, PATRICIA J. AND IVAN L. MILLS, GARY M. AND LORNA B. JACKSON, MATTHEW J. AND MARGARET A. FLANIGAN, VC 2002-SU-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a fence greater than 4.0 ft. in height in front yards. Located at 3701, 3703, 3705, 3709 Valley Oaks Dr.; 12694 Valley Oaks Ct.; 12730, 12732, 12734 Alder Woods Dr. on approx. 15.06 ac. of land zoned R-3 (Cluster). Sully District. Tax Map 45-2 ((15)) A, 19 - 21, 23, 24, 41 - 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. Tim Sampson, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mr. Hart gave a disclosure but indicated that it would not affect his ability to participate in the public hearing.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of fences greater than 4.0 feet in height in front yards of lots along Rugby Road. A maximum fence height of 4 feet is required; therefore, variances of 2.0 feet were requested.

Mr. Sampson presented the variance request as outlined in the statement of justification submitted with the application. He stated that the request was for a single fence over 9 parcels in the Fair Oaks Glen subdivision located directly across Rugby Road from Fair Oaks Hospital. Mr. Sampson said the application would allow for an extension of an existing 4 foot fence to a height of 6 feet. He said Fair Oaks Hospital received approval to expand its campus in the direction of Fair Oaks Glen and as part of that Rugby Road had been approved to be widened to 4 lanes. Mr. Sampson said the application met the required standards for a variance.

Chairman DiGiulian called for speakers.

Page 692 September 24, 2002, (Tape 1), FAIR OAKS GLEN HOMEOWNERS ASSOCIATION, PHILLIP N.P. NGUYEN, MILAGROS V. NGUYEN, TRUNG H. NGUYEN, HANH B. QUACH, GODANDARAMAN AND RAMANI RADHAKRISHNAN, PHILIP C. KLETT, TERESA L. PRICE, DEBRA HANNEMAN AND PHILIPPE S. JEAN BAPTISTE, PATRICIA J. AND IVAN L. MILLS, GARY M. AND LORNA B. JACKSON, MATTHEW J. AND MARGARET A. FLANIGAN, VC 2002-SU-103, continued from Page 691

Steve Wheeler, Fair Oaks Glen Homeowners Association, came forward to speak in support of the application. He said the front yards of the subject properties were effectively rear yards.

Chairman DiGiulian closed the public hearing

Mr. Hart moved to approve VC 2002-SU-103 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FAIR OAKS GLEN HOMEOWNERS ASSOCIATION, PHILLIP N.P. NGUYEN, MILAGROS V. NGUYEN, TRUNG H. NGUYEN, HANH B. QUACH, GODANDARAMAN AND RAMANI RADHAKRISHNAN, PHILIP C. KLETT, TERESA L. PRICE, DEBRA HANNEMAN AND PHILIPPE S. JEAN BAPTISTE, PATRICIA J. AND IVAN L. MILLS, GARY M. AND LORNA B. JACKSON, MATTHEW J. AND MARGARET A. FLANIGAN, VC 2002-SU-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a fence greater than 4.0 ft. in height in front yards. Located at 3701, 3703, 3705, 3709 Valley Oaks Dr.; 12694 Valley Oaks Ct.; 12730, 12732, 12734 Alder Woods Dr. on approx. 15.06 ac. of land zoned R-3 (Cluster). Sully District. Tax Map 45-2 ((15)) A, 19 - 21, 23, 24, 41 - 43. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 2002;

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. There are extraordinary conditions present with: through lots on a busy road that will be widened to four lanes; the location across from Fair Oaks Hospital; and expansion of parking garages and larger buildings coming closer to the applicants' homes.
4. The fence will help mitigate some of the impact from the surrounding development.
5. The fence height was contemplated at the time of the original approval and is consistent with Proffer 3 of RZ 95-Y-059.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted 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 693 September 24, 2002, (Tape 1), FAIR OAKS GLEN HOMEOWNERS ASSOCIATION, PHILLIP N.P. NGUYEN, MILAGROS V. NGUYEN, TRUNG H. NGUYEN, HANH B. QUACH, GODANDARAMAN AND RAMANI RADHAKRISHNAN, PHILIP C. KLETT, TERESA L. PRICE, DEBRA HANNEMAN AND PHILIPPE S. JEAN BAPTISTE, PATRICIA J. AND IVAN L. MILLS, GARY M. AND LORNA B. JACKSON, MATTHEW J. AND MARGARET A. FLANIGAN, VC 2002-SU-103, continued from Page 692

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 fences as shown on the plat prepared by Timothy Charles Culleiton, dated January 3, 2002 as revised through June 25, 2002, as 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. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 693 September 24, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JACQUES L. BOUROT, VC 2002-PR-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.0 ft. from front lot line. Located at 8736 Wolftrap Rd. on approx. 19,392 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 39-1 ((4)) 5B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jacques L. Bourot, 8736 Wolftrap Road, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 23 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, a variance of 17 feet was requested.

Mr. Bourot presented the variance request as outlined in the statement of justification submitted with the application. He said there was a creek at the rear of the house which precluded construction in that area. Mr. Bourot stated that the application met the requirements for a variance. He said the existing shed on the property would be removed.

Chairman DiGiulian called for speakers.

An unidentified speaker came forward to speak on behalf of his sister. The speaker indicated that he thought the applicant was taking 23 feet of his land for the construction. Chairman DiGiulian informed the speaker that the applicant was constructing an addition closer to the street than what was allowed by the Ordinance.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-PR-104 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JACQUES L. BOUROT, VC 2002-PR-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.0 ft. from front lot line. Located at 8736 Wolfrap Rd. on approx. 19,392 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 39-1 ((4)) 5B. 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 24, 2002;

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 there is a stream across the rear of the lot.
3. The plat reflects that the lot has an unusual shape.
4. The statement of justification indicated that the house was built in 1950s.
5. The photographs indicate that the house might need some improvements.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the additions as shown on the plat prepared by Brian W. Smith, dated, March 14, 2002, as revised through June 27, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 695 September 24, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROSE E. AND LOUIS A. WATKINS, SP 2002-MA-036 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 10.0 ft. from side lot line. Located at 6332 River Downs Rd. on approx. 19,354 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((32)) 31.

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 Kroll, 8569-E Sudley Road, Manassas Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on an error in building location to permit a dwelling to remain 10 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 5 feet was requested.

Page ~~696~~ September 24, 2002, (Tape 1), ROSE E. AND LOUIS A. WATKINS, SP 2002-MA-036, continued from Page ~~695~~

Ms. Kroll presented the requests outlined in the statement of justification submitted with the application. She introduced Charles Powell, Land Surveyor, and indicated that he would give a presentation. Mr. Powell stated that an incorrect grading plan was pulled which caused the error in building location. He said the error was detected when the applicants applied for a building permit for a deck.

Ms. Kroll noted a letter received from Ms. Kemp, the adjacent property owner, requesting damages for landscaping and window treatments. Ms. Kroll stated that she thought the issue was out of the purview of the BZA. She stated that the application met the criteria for a special permit. Ms. Kroll said there was a separation of 35.5 feet between the applicant's property and Ms. Kemp's property. She requested a waiver of the 8-day waiting period.

Chairman DiGiulian called for speakers.

Sandy Kemp, 6334 River Downs Road, came forward to speak in opposition. She said she was grossly affected by the error. Ms. Kemp requested the BZA to defer decision until Land Design and NV Homes settled with the affected parties. She said the error affected modifications in her deck planning, landscaping, and window treatments. Ms. Kemp said she was affected visually because the subject house towered over the edge of their property. She said she did not have the same privacy in her rear yard because she could hear the applicant's conversation in their kitchen. Ms. Kemp said there was no buffer.

Mr. Hart asked Ms. Kemp if the subject house was built when she purchased her lot. Ms. Kemp replied yes.

Ms. Kroll stated in her rebuttal, that the condition existed prior to the purchase of Ms. Kemp's property. She said any matters between Ms. Kemp and the applicant should be handled separately and were outside the scope of the special permit application.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that the matter between the applicant and Ms. Kemp was a civil matter and not within the purview of the BZA.

Mr. Kelley moved to approve SP 2002-MA-036 for the reasons noted in the Resolution.

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Page ~~696~~ September 24, 2002, (Tape 1), Scheduled case of:

9:30 A.M. RALPH C. DUKE, A 1999-HM-026 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Zoning Ordinance provisions. Located at 9935-A Corsica St. on approx. 37,885 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 3. (Deferred from 9/21/99, 11/9/99 and 11/28/00). (Def. From 3/27/01 and 9/25/01)

Dolores Kinney, Zoning Administration Division, stated that the appeal was of a determination that the appellant was maintaining two dwellings on the same property. The appeal had been deferred several times, and the initial hearing was in November 1999. Ms. Kinney stated that the appeal had been deferred to allow the appellant time to make provisions to obtain additional land, to rezone the property, and to subdivide the property to accommodate the second dwelling. She said at this point those phases of the process was still ongoing. Ms. Kinney stated that staff recommended dismissal of the appeal.

Mr. Duke said he was learning that the process was very complicated. He said over the last year he had hired an engineer, Huntley and Associates, which had completed the fill work, one of the requirements for rezoning the property, and had also prepared all the plats. Mr. Duke said he also hired an expediter, Walter Hamilton, to assist him through the process. He said he'd been going down a lot of dead end roads with the County and that he had 4 children in college. Mr. Duke said he did not have a lot of money, and had purchased the property in 1999 with the fact that everything was okay with the property. He said he is pursuing the issues without a lot of resources. Mr. Duke said he received an agreement with Mr. Smith to purchase property from him. He said he was working through the process doing the best he could. Mr. Duke said he was told by County staff that the entire process could take up to two years to complete.



Page 697 September 24, 2002, (Tape 1), RALPH C. DUKE, A 1999-HM-026, continued from Page 696

Mr. Ribble asked Mr. Duke when he hired Mr. Hamilton. Mr. Duke stated that he hired Mr. Hamilton at the beginning of the year.

Mr. Ribble asked if the agreement for the acquisition of a portion of Mr. Smith's property was in writing. Mr. Duke responded no.

Mr. Hart asked Mr. Duke why he had not filed for a rezoning. Mr. Duke responded that he was told by the County that once he acquired the land from Mr. Smith, and obtained a full acre, he could solely apply for rezoning.

Mr. Hart stated that although Mr. Duke had made some progress, he was concerned that he still had a long way to go through the process.

Mr. Hart said he thought the resolution was through a special permit for an accessory dwelling. Ms. Kinney replied that the appellant would need at least 2 acres.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that this case was difficult. He said staff should work with Mr. Duke to get the issues resolved. Mr. Pammel moved to uphold the determination of the Zoning Administrator.

Mr. Hart seconded the motion.

Mr. Kelley said he would oppose the motion. He suggested that the appeal be deferred for one year. Mr. Kelley said there was no compelling reason to act quickly on the appeal because the appellant was working diligently to get the issues resolved.

Chairman DiGiulian stated that he agreed with Mr. Kelley to defer the appeal for one year.

Mr. Kelley offered a substitute motion to defer the appeal for one year. Mr. Ribble seconded the motion, which carried by a vote of 3-2. Mr. Hart and Mr. Pammel voted against the motion. Ms. Gibb and Mr. Hammack were absent from the meeting.

Mr. Shoup indicated that only majority vote was necessary for a deferral.

Mr. Pammel moved to have no further deferrals. The motion failed for a lack of a second.

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Page 697 September 24, 2002, (Tape 1), Scheduled case of:

9:30 A.M.           MICHAEL P. D'AIUTO, A 2002-PR-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a car wash in the I-5 District without Special Exception approval in violation of Zoning Ordinance provisions. Located at 1524V Spring Hill Rd. on approx. 5.61 ac. of land zoned I-5. Providence District. Tax Map 29-3 ((1)) 60C.

Jack Reale, Zoning Administration Division, stated that the appeal was of a determination that the appellant was operating a car wash in the I-5 District without Special Exception approval in violation of the Zoning Ordinance provisions. He said a car wash was allowed in the C-8 District without special exception approval. Mr. Reale stated that the Zoning Ordinance was amended in 1984 to include hand washing of cars. He said the appellant's brochure indicated that the establishment included washing and vacuuming. Mr. Reale said the primary business was cleaning and waxing of cars. He said the number of cars washed did not determine the definition of car wash in the Zoning Ordinance.

Mr. Pammel asked how staff distinguished the difference between primary and secondary use. Mr. Reale stated that waxing was viewed as most similar to car wash.

Mr. Hart asked if the establishment had been there for 20 years. Mr. Reale replied that he was not representing that it had been there for 20 years, but that there was no evidence that the use was established prior to 1984.

Mr. D'Auito stated that the business was started in 1984 on Tyco Road. He said he detailed and waxed cars. He said he did not use conveyor belts. Mr. D'Auito submitted photographs reflecting the equipment used.

There was discussion regarding other establishments in the area that washed cars. Mr. Reale said he would have to investigate that issue.

Mr. Pammel asked the appellant if he did any work for dealerships. Mr. D'Auito replied about 50% of the work done was for dealerships.

Mr. Hart asked the appellant how long he had been at his current address. Mr. D'Auito replied approximately 6 months.

Mr. Hart asked for the percentages of the activities that take place on the property. Mr. D'Auito stated that 20% was washing, 50% was waxing, and 30% was other.

There was discussion about the materials used at the establishment and other establishments in the area.

William Shoup, Deputy Zoning Administrator, stated that the basic issue was that a car wash use needed a special exception in this district.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer the appeal for decision only. He said we would like to review the minutes from a 1989 cases. Mr. Hart said there was nothing in the Ordinance about waxing, but felt that there might be more going on at the establishment.

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting. The appeal was deferred for decision only to October 22, 2002, at 9:30 a.m.

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Page 698 September 24, 2002, (Tape 1), After Agenda Item:

Approval of Resolutions for September 17, 2002


Mr. Pammel moved to approve the Resolution. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

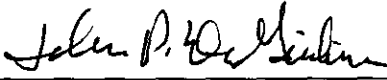
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As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Regina Thorn Corbett

Approved on: July 8, 2003

  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John DiGiulian, Chairman  
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 1, 2002. The following Board Members were present: Chairman John DiGiulian, Nancy Gibb, Paul Hammack, James Hart, Robert Kelley, James Pammel, and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 699 October 1, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BETTY M. MEADOWS, VC 2002-DR-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structures to remain 11.5 ft. and 10.8 ft. from side lot line. Located at 11254 Leesburg Pi. on approx. 5.0 ac. of land zoned R-1. Dranesville District. Tax Map 11-2 ((1)) 22C. (In association with SE 2002-PR-012)

Mr. Hart made a disclosure that he stated would not affect his ability to participate in the hearing.

Lynne Strobel, agent for the applicant, requested a deferral to allow the applicant time to work on issues with the community.

Mr. Pammel moved to defer VC 2002-DR-057 to October 22, 2002, at 9:00 a.m. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 699 October 1, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DOUGLAS K. & MICHELLE CLEVELAND, VC 2002-SP-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.8 ft. from front lot line. Located at 12234 Blue Topaz La. on approx. 33,654 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 53.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle Cleveland, 12234 Blue Topaz Lane, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 27.8 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, a variance of 12.2 feet was requested.

Ms. Cleveland presented the variance request as outlined in the statement of justification submitted with the application. She explained that her home was very small and they needed the addition to provide additional living space.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-SP-105 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS K. & MICHELLE CLEVELAND, VC 2002-SP-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.8 ft. from front lot line. Located at 12234 Blue Topaz La. on approx. 33,654 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 53. 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 1, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The survey indicates that the lot is unusually shaped.
4. The location of the home on the lot prevents construction of the addition in any other area on the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by George M. O'Quinn, dated May 22, 2002, as revised through July 11, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 70 October 1, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-D-098 Appl. under Sect(s) 3-C03 of the Zoning Ordinance to amend SP 83-D-098 previously approved for church (temple) and related facilities to permit change in land area, building addition and site modifications. Located at 7250 Ox Rd. on approx. 5.49 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 7E pt. and 7F.

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 Farrell, McCandlish & Lillard, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicant sought approval to amend SP 83-D-098 previously approved for a church and related facilities to permit a change in land area, a building addition and site modifications. The applicant proposed to increase the land area from 5.0 acres to 5.49 acres; construct a covered porch at the rear of the existing temple; reconfigure existing parking and stormwater management; and, add parking spaces and an interparcel connection to Lot 1A to the north. Although the proposal provided a limited amount of undisturbed open space in an R-C district, mitigating circumstances existed that warranted less stringent standards in this case. Staff recommended approval of SPA 83-D-098.

Mr. Pammel asked if the main reason for the application was to accommodate the right-of-way interests in the widening of Route 123. Ms. Josiah replied that was correct.

Mr. Farrell, agent for the applicant, stated that the reason for the application was to relocate the septic field for the temple from an area that was taken for the right-of-way for the widening of Route 123 onto property that was acquired by the Virginia Department of Transportation (VDOT) for that purpose and for a storm water detention facility that was currently in place.

He stated that VDOT proposed to relocate the driveway of the subject parcel to the south in order to reduce the slope of the driveway; however, that proposal required the removal of a substantial amount of mature trees so the applicants decided to stay with the current design of the driveway. Mr. Farrell said it would be necessary to relocate the handicap parking area from the area shown on the plat to a more level area of the property. He explained the request for the barrier waiver between the Temple and Lot 20. He said there were approximately 60 to 80 feet of mature woods between the two properties and on Lot 20 there was a 9 foot elevation difference between the bottom of the foundation of the home and the property line and a 5 foot rise between the property line and the Temple. He drew a diagram illustrating the elevation differences between the two properties. He said a fence would not provide any barrier because of the differences in elevation and would also require the removal of many trees because the wooded area was very dense. He explained that if trees were to be planted to act as a barrier they would die because of the denseness of the woods. He suggested that the existing vegetation was sufficient.

Ms. Gibb stated that there had been an agreement between the Temple and the neighbors that there would be evergreen trees planed to provide additional screening.

Chairman DiGiulian called for speakers.

Mr. Farrell asked for all those present in support of the application to stand in the audience as opposed to individually speaking.

Robert Tucker, 10502 Clipper Drive, came forward to speak in opposition. He stated that he owned Lot 20 which was located south of the Temple. He said the only aspect of the application that he was opposed to was the deletion of the barrier. He explained that he was one of the parties present at the meeting in which the Temple agreed to substitute a row of evergreen trees in lieu of a fence and the trees were planted and died within the first year. He stated that he had no issue with the existing trees; however, in the winter time they did not provide an adequate barrier between his property and the church. He requested that the applicant install a fence to act as barrier along the entire length of the property line. He said the elevation differences were not as severe as Mr. Farrell had indicated.

Mr. Hammack asked Mr. Tucker if he would be satisfied with the installation of a different type of tree that would be able to grow higher than 6.0 feet and survive in dense conditions. Mr. Tucker replied that he would be hesitant to support that suggestion as the previous trees had died. Mr. Hammack noted that Mr. Tucker was not in agreement with Mr. Farrell's description of the differences in elevation between the two properties and asked for an explanation. Mr. Tucker explained that his property sloped enough in the rear that a 6.0 foot fence would provide screening for his back yard. Mr. Hammack asked if the other three lots adjacent to his were under the same conditions. Mr. Tucker stated that his property was the highest point on the street so the three other properties were lower than his and level with the property in question.

Ms. Gibb asked Mr. Tucker what the view of the Temple was from his property. He replied that the view from his house was straight to the front door of the Temple.

Mr. Hart asked if VDOT still owned the back part of Lot 7E. Mr. Tucker replied that they did.

Mr. Hart asked Mr. Farrell what was located on Lot 7E. Mr. Farrell explained that there was a storm water pond located on the property along with a farm fence that extended the length of the property. He explained that all that the neighbors would see was an open farm field.

Mr. Hart asked Mr. Tucker if the owners of 118A could see the parking lot of the Temple from their property. Mr. Tucker replied that they could see the lights from the parking lot during the winter.

Ms. Gibb asked if staff felt the screening was necessary. Ms. Josiah explained that the entire use should be screened in the southern section and, because the septic field was located close to the lot line, planting should occur in any area that it was feasible. Ms. Josiah illustrated the areas of Lot 7E that staff proposed to have additional plantings.

Layton Jones, 7312 Burke Meadow Drive, came forward to speak in opposition. He said there was a high chain link fence that was proposed to be installed around the storm water pond. He stated that the neighbors were concerned that people would use the service road into the storm water pond for ingress and egress from the Temple. Mr. Jones requested that the Temple construct a gate to ensure the service road would be used for maintenance purposes only.

Mr. Farrell, in rebuttal, stated that the Temple was in agreement with planting screening along the septic field. He reiterated that any fence located between the Temple and Lot 20 would require the removal of many mature trees and would not serve any functional purpose. He said there were 60 to 80 feet of mature woods between the Tucker residence and the Temple and there were also trees on the Tucker residence so all of the screening totaled approximately 100 feet of mature trees between the two properties. He said the Zoning Ordinance only required 25 feet of screening; therefore, the applicants were providing three times the amount required.

Mr. Farrell stated that the applicants would support a development condition restricting the access of the service road for maintenance purposes only.

Chairman DiGiulian closed the public hearing.

Page 703 October 1, 2002, (Tape 1), TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-D-098, continued from Page 702

Ms. Gibb stated that the only issue for her was waiving the transitional screening requirement and she wanted to visit the site.

Ms. Gibb moved to defer decision to October 8, 2002, at 9:00 a.m. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

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Page 703 October 1, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MALINI S. CUNJE, SP 2002-PR-037 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 2828 Cedar La. on approx. 14,040 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((4)) 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. Malini Cunje, 2828 Cedar Lane, Vienna, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested approval for a home childcare facility with a maximum of 10 children onsite at any one time. The applicant currently operated a home childcare facility onsite. The proposed hours of operation were 7:00 a.m. to 6:00 p.m. Monday through Friday and a total of 1 employee in addition to the applicant and her husband. Staff recommended approval of the special permit.

Mr. Hart stated that the applicant was required to remove an amount of driveway pavement to come into compliance with the Zoning Ordinance and asked which portion of the pavement would be removed. Ms. Josiah replied that staff had left that to the discretion of the applicant but one full side of pavement needed to be removed leaving enough room in the front of the property for a turnaround.

Ms. Cunje presented the special permit request as outlined in the statement of justification submitted with the application. She explained that she currently operated a home childcare facility caring for four infants. She stated that approval of the special permit would allow her to provide quality childcare in the neighborhood.

Gabriel Cunje came forward to explain to the Board the reason for the amount of paving on their property. He stated that the home suffered massive floods in the basement because the elevation of the home was below that of Cedar Lane and the adjoining properties to the north. He said water would rush down onto their property and leak into the basement. He stated the last flood ruined three of his computers and all of the furniture in the basement and they had burnt out three sump pumps. He said the water had washed away the front stoop of the home and the builder had to come back and replace it. He explained they had installed concrete along the side of the home along with a drain to stop the flooding problem.

Mr. Hart asked for an illustration of the front yard. Mr. Cunje submitted a plat illustrating the layout of the front yard.

Mr. Hammack asked why staff left the removal of pavement to the discretion of the applicant. Ms. Josiah answered that staff felt that the applicant should decide which portion of the property they wanted the pavement to be removed. She said the Board could implement a development condition outlining a certain amount of pavement to remove and which portion of the property to remove it from.

Mr. Hammack asked the applicants if they had any objection to removing any portion of the concrete. Mr. Cunje replied that if they removed any of the concrete they would have an engineer look at the property to suggest different ways of preventing flooding.

Mr. Pammel asked if staff was aware of the flooding issue. Ms. Josiah replied that staff was not aware of that problem until the hearing.

Mr. Kelley replied that he would not support the removal of any of the driveway concrete.

There were no speakers and Chairman DiGiulian closed the public hearing. He noted that there were several letters in opposition of the special permit.

Mr. Pammel stated that he had visited the site and understood the reasoning behind the applicants' installation of the concrete on the property. He said he had more concerns about the adjacent property which was a very visible junkyard and asked that Zoning Enforcement perform an inspection on that property.

Mr. Pammel moved to approve SP 2002-PR-037 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MALINI S. CUNJE, SP 2002-PR-037 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 2828 Cedar La. on approx. 14,040 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((4)) 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 October 1, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Mr. Pammel visited the site and received a thorough explanation of the drainage problems that prompted the construction of the two concrete driveways on the property.
3. There is adequate space on the northern and western areas of the property to install the necessary planting to meet the buffering requirements.
4. The home child care facility was clean, well organized and well managed.

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, 2828 Cedar Lane (14,040 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 plats prepared by Certified Real Estate Services, dated September 22, 2000, as revised by Gabriel C. Cunje, through August 27, 2002, 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 of the home child care facility shall be limited to a maximum of 7:00 a.m. to 6:00 p.m., Monday through Friday.



5. The maximum number of children on site associated with the home child care facility shall not exceed 10 at any one time.
6. The number of staff for the home child care facility shall not exceed one (1) employee in addition to the proprietor and her husband.
7. This home child care facility shall be conducted on the application property and shall be the primary residence of the child care provider.
8. There shall be no signs associated with this use.
9. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), plantings consisting of evergreens with a minimum height of six (6) feet, placed a minimum of ten (10) feet on center, shall be installed, with species, size and location as determined by the Urban Forestry Branch, Department of Public Works and Environmental Services (DPWES), along the north, south and west property lines in the rear yard in order to visually screen the child care use from the adjacent properties.
10. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), an administrative reduction to the minimum required side yard shall be obtained by the applicant.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 705 October 1, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DENISE B. DORITY, VC 2002-DR-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.8 ft. from rear lot line and dwelling to remain 8.3 ft. from side lot line. Located at 6732 Baron Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-4 ((8)) (M) 19. (Admin moved from 9/10/02 per appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Denise Dority, 6732 Baron Road, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a room addition with a screened porch addition above to be located 18.8 feet from the rear lot line and a second variance to permit the open porch, a stoop, to remain 8.3 feet from a side lot line. The Zoning Ordinance permits a minimum rear yard of 25 feet and a minimum side yard of 15 feet; therefore, a variance of 6.2 feet for the screened porch addition and a variance of 3.7 feet for the stoop were requested.

Ms. Dority presented the variance requests as outlined in the statement of justification submitted with the application.

Chairman DiGiulian noted that a neighbor had requested a two week deferral. Ms. Dority explained that she had been out of the Country prior to the hearing and her neighbor requested the deferral during that period of time. She said she had spoken with her neighbor the previous evening and addressed any issues that she had. She stated that she wanted to construct a bedroom for her elderly mother, but a variance was needed because her yard was very narrow and shallow. She said her property backed to vacant Fairfax County School property and both her neighbors were in support of the application. Ms. Dority said she also wanted to construct a deck or a screened porch for her mother to utilize.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-DR-090 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DENISE B. DORITY, VC 2002-DR-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.8 ft. from rear lot line and dwelling to remain 8.3 ft. from side lot line. Located at 6732 Baron Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-4 ((8)) (M) 19. (Admin moved from 9/10/02 per appl. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 1, 2002; 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 standards for the granting of a variance.
3. The lot is very narrow.
4. The variance request outlines that the proposed addition is realistically the only way a bedroom could be added onto the home.
5. The variance would not cause a significant impact on the property to the rear which is surplus School Board property.
6. The side porch is relatively insubstantial and open and is consistent with the other homes in the area.
7. The bedroom addition is consistent with the other variance that was granted for a different property located on the same street.
8. There would be no significant impact on the neighbor to the side of the subject property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for an addition and dwelling as shown on the plat prepared by George M. O'Quinn, dated December 26, 2001, as revised through March 26, 2002, as 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 October 9, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 707 October 1, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOSE A. MENDEZ, SP 2002-LE-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from side lot line and 2.3 ft. from rear lot line. Located at 5914 Erving St. on approx. 9,023 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (20) 8. (Admin moved from 7/23/02 and 8/13/02 for notices)

Jennifer Josiah, Senior Staff Coordinator explained that the applicant had failed to meet the notice requirements for the third consecutive time.

Mr. Hart asked if the applicant was present. Juan Bernal, Staff Coordinator, explained that the applicant was present and that he had spoken with the applicant and he indicated to Mr. Bernal that he had mailed the

required notices but could not provide staff with the certified receipts for confirmation. Mr. Bernal explained that he had tried to contact the applicant on several occasions but he received no response.

Chairman DiGiulian stated that since the applicant had failed to meet the notice requirements three consecutive times the case should be dismissed without prejudice to allow the applicant the right to reapply.

Mr. Pammel moved to dismiss SP 2002-LE-029 without prejudice. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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9:30 A.M. LAKESIDE INN OF RESTON, INC., A 2002-HM-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has erected a tent which is not in substantial conformance with the zoning for the site which was approved as a portion of rezoning application A-502. Located at 1617 Washington Pl. on approx. 6,233 sq. ft. of land zoned PRC and HD. Hunter Mill District. Tax Map 17-2 ((31)) 1617 and a portion of Washington Plaza.

9:30 A.M. LAKESIDE INN OF RESTON, INC. D/B/A IL CIGNO RISTORANTE, A 2001-HM-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed on the property a tent which displays advertising signs, without Building Permit or Sign Permit approval and without obtaining Architectural Review Board approval of such permits, as required in the Historic Overlay District, all in violation of Zoning Ordinance provisions. Located at 1617 Washington Pl. on approx. 6,233 sq. ft. of land zoned PRC and HD. Hunter Mill District. Tax Map 17-2 ((31)) 1617 and a portion of Washington Plaza. (Admin moved from 10/23/01, 1/8/02 5/7/02 and 7/23/02)

William E. Shoup, Deputy Zoning Administrator, explained that staff supported the deferral requests made by the applicant and recommended a 6-month deferral for A 2001-HM-021 and a deferral to January for A 2002-HM-021.

Mr. Ribble moved to defer A 2001-HM-021 to April 1, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

Mr. Ribble moved to defer A 2002-HM-021 to January 14, 2003, at 9:30 a.m. 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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9:30 A.M. E.P. MOWING & LANDSCAPING, INC., A 2002-MV-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing the operation of a contractor's office in the C-8 District without a valid Non-Residential Use Permit or Site Plan approval in violation of Zoning Ordinance provisions. Located at 8801 Richmond Hwy. on approx. 2.85 ac. of land zoned C-6, C-8, HC, HD and CRD. Mt. Vernon District. Tax Map 109-2 ((2)) 9. (Admin from 7/30/02 per appl. req.)

James Turner, agent for the appellant, requested a deferral of the appeal to allow time for him to obtain an affidavit from Ms. May, the prior owner of the property, but was unable to retain her signature. He requested a deferral of one week.

William E. Shoup, Deputy Zoning Administrator, stated that staff was in support of the deferral request. He requested a longer deferral to allow time to research the affidavit.

Mr. Kelley moved to defer A 2002-MV-013 to October 29, 2002, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 709, October 1, 2002, (Tape 1), After Agenda Item:

Request for Additional Time  
Trustees of Singh Sabha Gurdwara, SP 99-S-058

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date is June 21, 2004.

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Page 709 October 1, 2002, (Tape 1), After Agenda Item:

Approval of June 18, 2002 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 709, October 1, 2002, (Tape 1), After Agenda Items:

Approval of September 24, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

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As there was no other business to come before the Board the meeting was adjourned at 10:47 a.m.

Minutes by: Lori M. Mallam

Approved on: August 5, 2003

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John P. DiGiuliano*

John DiGiuliano, 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 8, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; James Hart; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:04 A.M. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 711, October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. KYLE P. MAY, VC 2002-MA-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 6831 Little River Tnpk. on approx. 28,518 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 12A. (Def. Dec. from 9/10/02)

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. Kyle May, 6831 Little River Turnpike, Annandale, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as outlined in the staff report. The applicant requested approval of a variance to permit a fence greater than 4.0 feet in height remain in a front yard.

Responding to the Indian Run HOA's concerns stated during the September 10<sup>th</sup> BZA hearing, Mr. May explained that, at his driveway's entrance, he affixed a mirror to the top of his fence which addressed the site distance issue. Mr. May submitted that his home owners association approved of his variance request.

Mr. Hammack queried Mr. May on the possibilities of moving the fence. He then voiced his concern that all the issues had not been properly addressed.

Explaining that he had consulted Lee Fence Company, Mr. May noted the hardships and expense of moving the fence. He stated that the consultant advised him that the fence was in the right location to afford the privacy and security that the applicant sought.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny the application for the reasons stated in the Resolution.

Mr. Pammel stated that he concurred with Mr. Hammack, that the hardship issue had not been proven and that a standard fence, in compliance with the Ordinance, could be placed there.

Mr. Hart submitted that the sight distance at the driveway's entrance was his concern, and for that reason he was unable to support the application.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

KYLE P. MAY, VC 2002-MA-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 6831 Little River Tnpk. on approx. 28,518 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 12A. (Def. Dec. from 9/10/02) 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 8, 2002, 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 satisfied the nine required standards for variance applications.

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.

Mr. Hart moved to waive the 12-month waiting period for refiling an application. The motion was seconded by Ms. Gibb and Mr. Hammack and carried by a 7-0 vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 2002.

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Page 712, October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH AND SUZANNE COTELLESA, VC 2002-MV-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 18.8 ft. and 18.9 ft. from side lot lines. Located at 10531 Amity St. on approx. 21,782 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 110.



Page 713, October 8, 2002, (Tape 1), JOSEPH AND SUZANNE COTELLESA, VC 2002-MV-108, continued from Page 712

Chairman DiGiulian indicated that VC 2002-MV-108 was withdrawn.

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Page 713, October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DOUGLAS J. FEARSON, VC 2002-SU-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.6 ft. from rear lot line. Located at 13121 Ladybank La. on approx. 13,152 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 573.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Douglas J. Fearson, 13121 Ladybank Lane, Herndon, Virginia replied that it was.

Mr. Juan Bernal, Staff Coordinator, presented the request as outlined in the staff report. The applicant requested a variance to permit the construction of an addition 19.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 5.4 feet was requested.

Explaining that he sought to screen an existing porch, with no change in the footprint, Mr. Fearson stated that his property had a substantial stand of mature trees, a pipeline easement, and adjoining park land, which afforded excellent buffering for his neighbors. He submitted that, as he had no negative responses, he believed he had the neighbors support.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve the variance application for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS J. FEARSON, VC 2002-SU-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.6 ft. from rear lot line. Located at 13121 Ladybank La. on approx. 13,152 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 573. 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 8, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant meets the prescribed criteria for the granting of variance.
3. The applicant's lot is an irregular shape.
4. The lot is extremely 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 an addition as shown on the plat prepared by Kenneth W. White, dated April 5, 2002, and revised by Bryant L. Robinson, dated August 1, 2002, as 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 7-0 vote. Mr. Hart moved to waive the 8-day waiting period. The motion was seconded by Mr. Ribble, which carried unanimously by a 7-0 vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 714, October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS W. PEARSON, SR., VC 2002-MA-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.9 ft. from side lot line. Located at 5508

Sheldon Dr. on approx. 10,314 sq. ft. of land zoned R-4. Mason District. Tax Map 81-1 ((4)) (J) 9. (Concurrent with SP 2002-MA-039).

9:00 A.M. THOMAS W. PEARSON, SR., SP 2002-MA-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.7 ft. from rear lot line and 7.2 ft. from side lot line. Located at 5508 Sheldon Dr. on approx. 10,314 sq. ft. of land zoned R-4. Mason District. Tax Map 81-1 ((4)) (J) 9. (Concurrent with VC 2002-MA-106).

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 W. Pearson, Sr., 5508 Sheldon Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to minimum yard requirements based on an error in building location to permit an accessory structure to remain 1.7 feet from the rear lot line and 7.2 feet from the side lot line. A minimum rear yard of 8.9 is required and a minimum side yard of 10.0 feet is required; therefore, modifications of 7.2 feet and 2.8 feet were requested respectively. The applicant also requested a variance to permit the construction of an addition 1.9 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 8.1 feet was requested.

Mr. Pearson stated that the garage addition was a safety feature. Responding to Mr. Hart's questions, he noted that the existing shed was architecturally compatible with his house. In response to Messieurs Hart and Hammack, he stated that there was no other suitable place on his lot to put the garage.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve the special permit for the reasons stated in the Resolution.

Mr. Pammel advised the applicant that his shed was partially located within a storm drainage easement. He explained to Mr. Pearson that it was within the County's purview to remove the shed if a flood condition or storm damage warranted the shed's removal in order to correct the situation.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

THOMAS W. PEARSON, SR., SP 2002-MA-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.7 ft. from rear lot line and 7.2 ft. from side lot line. Located at 5508 Sheldon Dr. on approx. 10,314 sq. ft. of land zoned R-4. Mason District. Tax Map 81-1 ((4)) (J) 9. (Concurrent with VC 2002-MA-106). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 2002; 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 shed, as shown on the plat prepared by George M. O'Quinn, dated March 19, 2002, as revised through April 30, 2002, 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 October 16, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to deny the variance application for the reasons stated in the Resolution.

Mr. Hammack stated that the application was difficult to support as he concurred the hardship standard was not proved. He believed the garage could be placed elsewhere, perhaps with a different configuration, or by being a free-standing unit which would require less of a variance.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS W. PEARSON, SR., VC 2002-MA-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.9 ft. from side lot line. Located at 5508 Sheldon Dr. on approx. 10,314 sq. ft. of land zoned R-4. Mason District. Tax Map 81-1 ((4)) (J) 9. (Concurrent with SP 2002-MA-039). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 2002, 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 showing compliance with the required standards for variance.
3. The case for the requested variance, as presented, does not appear to be a compelling need.
4. The lot is not particularly small nor an unusual size.
5. There are other more appropriate areas on the lot for the addition.
6. There was no case presented for hardship.

This application does not meet all of the following Required Standards for Variances in Section 18-04 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 6-1. Mr. Kelley voted against the motion.

Mr. Hart moved to waive the 12-month waiting period for refileing an application. The motion was seconded by Mr. Pammel and carried unanimously by a 7-0 vote.

Page 718, October 8, 2002, (Tape 1), THOMAS W. PEARSON, SR., VC 2002-MA-106, and THOMAS W. PEARSON, SR., SP 2002-MA-039, continued from Page 717

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 2002.

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Page 718, October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. RONALD W. CAIN, VC 2002-MV-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit constructin of addition 7.0 ft. from side lot line and fence greater than 7.0 ft. in height to remain. Located at 1702 Elkin St. on approx. 12,043 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((15)) 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. Ronald W. Cain, 1702 Elkin Street, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented staff's position as contained in the staff report. The applicant requested a variance to permit the construction of an addition 7.0 feet from the side lot line and a fence greater than 7.0 feet in height to remain. A minimum side yard of 12 feet is required; therefore, a variance of 5 feet was requested for the addition. The Ordinance does not allow fences in excess of 7 feet in height in a side or rear yard. Ms. Josiah noted that a revised plat, with corresponding development conditions indicating a new shed, was distributed to the Board that morning.

Mr. Cain stated that his lot was irregular shaped, and had a sewer easement which greatly limited suitable construction areas as well as design possibilities. Responding to Mr. Hammack and Hart's questions, he explained the unusual style of the fence and the reasons for its varying heights.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve-in-part the variance request for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD W. CAIN, VC 2002-MV-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line and fence greater than 7.0 ft. in height to remain (**THE FENCE WAS DENIED**). Located at 1702 Elkin St. on approx. 12,043 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((15)) 5. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 2002; 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, in part, the standards required for a variance.
3. The easement through the middle of the lot restricts buildable areas.
4. *The lot is an irregular shape.*

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED IN-PART**, with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by R.C. Fields, Jr. & Associates, dated June 11, 2002, as signed October 3, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Kelley voted against the motion.

Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried by a 7-0 vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 8, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 720 October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF FIRST BAPTIST CHURCH OF FOX CHASE, SP 2002-MA-038 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4215 Pine La. on approx. 1.78 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 63. Administratively moved to 10/29 per applicant's request.

Chairman DiGiulian indicated that the Trustees of First Baptist Church of Fox Chase application was administratively moved to October 29, 2002.

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Page 720, October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ST. FRANCIS EPISCOPAL CHURCH OF GREAT FALLS, VA, SPA 82-D-087-4 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-087 previously approved for a church with child care center and nursery school to permit site modifications. Located at 9220 Georgetown Pi. on approx. 6.81 of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 8. (moved from 7/9/02 and 7/30/02)

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 Baker, 9220 Georgetown Pike, Great Falls, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit site modifications specifically the addition of 47 paved parking spaces for a total of 113 parking spaces on site. The site had been the subject of special permits granted by the BZA since 1982. Subject to the proposed development conditions in the staff report, staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; and therefore, recommended approval.

Mr. Baker stated that the church needed a larger parking area to alleviate the parking behind the church and out on to the street.

Responding to Mr. Hart's question, Ms. Josiah stated that the plat stated that the area was to be paved and that the development condition carried forward mandated the installation of wheel stops.

Mr. Baker stated that he concurred with the development conditions, with the exception of one technical issue which their engineer would address.

Mr. Reed Dudley, Runyon Dudley Engineers, noted Condition #15, stipulating that stormwater management be located outside the playing area and the transitional screening areas. He explained that if a conservation easement were established to meet the BMP requirements, overlapping into the transitional screening areas would be approved, considered compatible, and would meet the requirements. He requested that the condition be amended to allow the overlap.

The Board and staff concurred with Mr. Dudley's request and the language for Development Condition #15 was amended by deleting the words "... transitional screening area."

Discussion followed among Board members and Mr. Dudley concerning lighting of the parking lot and the existing building, concluding that there were no changes. Ms. Josiah clarified 'uplighting' to the Board members.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve the application for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. FRANCIS EPISCOPAL CHURCH OF GREAT FALLS, VA, SPA 82-D-087-4 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-087 previously approved for a church with child care center and nursery school to permit site modifications. Located at 9220 Georgetown Pi. on approx. 6.81 of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 8. (moved from 7/9/02 and 7/30/02) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Staff recommends approval of the application.
3. The applicant has met the standards required for a special permit 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). 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, 9220 Georgetown Pike (6.81 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 Runyon, Dudley, Associates, Inc., dated March 8, 2002, as signed March 17, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats shall be 250; parking shall be provided based on the requirements of Article 11 as determined by DPWES. There shall be a maximum of 113 parking spaces as shown on the plat. All of the parking for the use shall be provided on site as shown on the special permit plat.
6. Wheel stops or a similar barrier shall be installed along the eastern edge of the driveway and parking lot to prevent parking in the transitional screening area.
7. The combined maximum daily enrollment for the child care center and nursery school shall not exceed 50 children.

8. The maximum number of children using the play area at any one time shall not exceed 16.
9. The septic system shall conform to state and local regulations as determined by the Fairfax County Department of Environmental Health, or this special permit shall be rendered null and void.
10. Transitional Screening 1 shall be modified along all lot lines to allow the existing vegetation to satisfy these requirements, except that a full transitional screening buffer shall be provided along the western lot line from Georgetown Pike to approximately 30 feet north of the proposed parking lot. The size, type, location and number of all transitional screening materials shall be subject to review and approval of the Urban Forestry Branch of DPWES. The supplemental landscaping provided along the eastern property boundary adjacent to the driveway and parking lot shall be maintained so that it shields the adjacent residential properties from the view of the driveway and parking lot. The evergreen trees and/or evergreen plants provided along the existing tree line adjacent to the northern property boundary shall be maintained to assure adequate screening as determined by the Urban Forestry Branch of DPWES, beginning at the northwest corner of the playground and extending to the eastern property boundary, and south along the eastern property boundary, ending at the existing 40" diameter Black Walnut tree adjacent to the travel way. Transitional screening shall be maintained so that any dead or dying plant material shall be replaced with plant materials of a like kind. The Barrier requirement shall be waived along all lot lines.
11. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by DPWES. Notwithstanding what is depicted on the special permit plat, supplemental plantings shall be provided along the northern periphery of the new parking area, west of the sanctuary in order to adequately screen the parking area within the site. The foundation plantings, the purpose of which shall be to soften the visual impact of the buildings, shall be maintained around the existing church and the proposed parish hall/Sunday school structures on the property. The type, size, amount and location of these plantings shall be approved by the Urban Forestry Branch of DPWES.
12. Any proposed lighting of the parking lot shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed 12 feet and shall be full cut-off lights.
  - The lights shall be of a design which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
  - There shall be no up-lighting of any of the existing buildings.
13. The board fence located around the air conditioning unit as shown on the special permit plat shall be maintained in good repair.
14. The maximum hours of operation for the child care center/nursery school shall be 9:00 a.m. to 2:00 p.m., Monday through Friday.
15. Stormwater Management (SWM) and/or Best Management Practices (BMPs) shall be provided as required and as shown on the special permit plat, as determined by DPWES. The SWM/BMP shall be located outside the play area.
16. The proposed limits of clearing and grading adjacent to the parking area shall be reduced from that shown on the special permit amendment plat to coincide more closely with the limits of the parking area to the maximum extent feasible, as determined by DPWES.

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 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 6-0 vote. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 723 October 8, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-D-098 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 83-D-098 previously approved for church (temple) and related facilities to permit change in land area, building addition and site modifications. Located at 7250 Ox Rd. on approx. 5.49 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 7E pt. and 7F. (def from 10/1/02 for decision only)

Chairman DiGiulian announced the next case, noting that it was deferred from the October 1st BZA meeting and that the applicant's representative, John W. Farrell, Esquire, with McCandlish & Lillard, PC, need not reaffirm the affidavit.

Ms. Gibb called attention to a letter from an adjoining property owner, Mr. Tucker, where the transitional screening and barrier requirements were questioned.

Ms. Jennifer Josiah, Senior Staff Coordinator, spoke with Mr. Tucker clarifying his request for a fence or barrier to prohibit people from trespassing. She stated that staff supported a fence requirement if no trees were removed.

Ms. Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff had no objection to a barrier. She pointed out that Zoning Ordinance language required transitional screening and a barrier, and that an applicant would have a reasonable expectation to comply, unless the requirement was waived by the Board. In response to Ms. Gibb, Ms. Langdon explained that the requirement had initially been waived at the October 1<sup>st</sup> hearing, but there was now additional parking provided, the site was expanded and a new septic field would be installed; these factors warranted staff's review and adjustment, she noted.

Mr. Farrell stated the application had two issues: The type fencing to be installed in the area deeded by the Virginia Department of Transportation (VDOT); and, the letter of concern submitted by Mr. Tucker. He pointed out that the installation of a gate to access the drainage basin would substantially impede access to the site. With regard to Mr. Tucker's letter, Mr. Farrell believed that the installation of a fence was for visual transition and was not to impede pedestrian access between the properties. He said there was no justification to change the condition. He pointed out that there was an abundance of herbaceous material to block entrance onto Mr. Tucker's property, and there was no evidence of trails or paths from the Temple property onto Mr. Tucker's. He commented that Mr. Tucker had the right to build his own fence. Mr. Farrell requested the language of Development Condition #8 be changed to state that VDOT provide the barrier. With regard to his concern over the provision of planting in the septic area along the southern boundary, Mr. Farrell submitted that the required trees would interfere with the septic fields operation due to root infiltration and after a time, must be razed. He therefore requested the second sentence of Development Condition #8 be deleted.

Mr. Farrell responded to Mr. Hart's question explaining the reasons why a chain link fence was not feasible. He noted architectural incompatibility and the difficulty and cost of inserting the required plastic sheaths.

In response to Ms. Gibb, Ms. Langdon clarified the Ordinance language for the requirement/or provision of chain link fences and plastic sheaths. Staff's position, she stated, was that the applicant could determine the type of barrier, whether chain link with or without inserts or a wooden fence. Ms. Langdon added that the Department of Public Works and Environmental Services (DPWES) would make the final determination of which VDOT must approve.

Chairman DiGiulian called upon Mr. Tucker to address the barrier issue.

Mr. Tucker understood the Ordinance language stipulated a 'barrier' "to bar passage" and for that reason he requested the barrier. He said that transitional screening was not the issue. He asked that the barrier requirement be enforced because he feared possible liability. He explained the problems with cut-through pedestrian traffic and children playing on private play equipment that had been both he and his neighbor's experience. He said several times children had climbed into a family treehouse. He had removed the ladder only to witness children climb the tree next to the treehouse and then jump over. He took the treehouse down.

There being no further speakers, Chairman DiGiulian called Mr. Farrell for rebuttal.

Mr. Farrell maintained that the Temple was sensitive to the community and sought to be good neighbors. He cited the occasion where they worked with VDOT to save a substantial tree area by their driveway to be aesthetically pleasing for the neighbors. Mr. Farrell stated his opposition to the possibility that the Temple might be financially burdened with having to provide a barrier in order to prevent children from playing on the neighbors' property.

Chairman DiGiulian denied Mr. Tucker's request to comment.

Discussion followed among Mr. Hart, Ms. Langdon and Mr. Farrell regarding the fence and the vegetative growth along the Temple property's perimeter.

There being no further questions or comments by the Board, Chairman DiGiulian closed the public hearing.

Ms. Gibb commented on some of Mr. Farrell's comments and stated that she believed safety and screening were the issues in the application.

Mr. Pammel stated he had walked the site and found the neighboring properties easily accessible. He concurred that a barrier should be required.

Ms. Langdon stated that, if the decision were deferred, staff and the Urban Forrester would walk the site to determine the appropriate place for a barrier.

Mr. Hart suggested definitive language be crafted for the fence's exact location.

Ms. Langdon concurred that staff would propose explicit language.

Mr. Kelley voiced his concern over Mr. Tucker's potential liability which in some manner should be considered when drafting the condition.

Mr. Farrell noted that there might be Ordinance complications with placing a fence within an AT&T easement.

Ms. Gibb moved to defer the decision on SPA 83-D-098, Trustees of Sikh Foundation of Virginia, to October 29, 2002, at 9:00 a.m. in order to allow staff time to research the barrier requirement and its location.

The motion was seconded by Mr. Kelley and carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 725 October 8, 2002, (Tape 1), Scheduled case of:

9:30 A.M. RENAISSANCE AT BRIDGES OF OAKTON, A 2002-HM-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants must clear violations indicated in a Notice of Violation dated April 2, 2002, within 15 days of receipt of the Notice. Located at 2552 Bridge Hill La. on approx. 1.73 ac. of land zoned R-E. Hunter Mill District. Tax Map 36-2 ((13)) 15. (admin moved from 7/16/02 per appl req.)

Chairman DiGiulian announced that Appeal 2002-HM-012 was withdrawn.

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Page 725 October 8, 2002, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT ASHLEY ROWE AND LISA M. RAND-ROWE, A 2002-HM-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the erection of a six foot fence in the front yard of a corner lot is in violation of Zoning Ordinance provisions. Located at 2412 Carey La. on approx. 28,734 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 38-3 ((20)) 41. (Admin moved from 8/13/02 per appl. req)

Mr. Hart advised that his firm's counsel had represented the Rowes on a different case. He, therefore, recused himself.

Ms. Susan Epstein, Assistant to the Zoning Administrator, presented staff's position. She explained that at the May 7, 2002, hearing, the BZA denied VC 2002-HM-020 to permit a six-foot fence but that a follow-up inspection verified the violation remained. Staff requested the BZA uphold the Notice of Violation, so as to allow appropriate enforcement action to ensure a timely resolution of the violation.

The appellant, Mr. Robert Rowe, introduced Michael Yuram, a traffic specialist with Fairfax County Police Department, to present expert testimony.

Mr. Yuram offered to explain and submit for the record a crash analysis document of the area within close proximity to Mr. Rowe's property.

Chairman DiGiulian pointed out that Mr. Yuram's testimony should have been entered during the public hearing for the variance request; that it was not appropriate for the appeal.

Mr. Rowe stated that a Fairfax County inspector's error omitted a substantial area that should have been included in staff's calculations when determining the violation. He asserted that he had not been timely cited for the violation. He rebuked a neighbor's letter of complaint which alleged he had violated the homeowner's covenant regarding an approved color for the fence, submitting that there was no color covenant and that the letter may have prejudiced the Board against him. Mr. Rowe concluded that he was not properly cited and requested that the wooden six-foot portion of the fence be allowed to remain for protection against trespassers, liability and vandalism.

Chairman DiGiulian called for speakers.

Mr. Roger Mackin, 2401 Carey Lane, voiced his support to uphold the Zoning Administrator's determination. He believed the fence's height was in violation of the neighborhood's covenant as well as being an eyesore. Mr. Mackin added that the six-foot height blocked sight distance at the street corner.

Mrs. William Wyse, a resident at the end of Carey Lane, voiced her support to uphold the height regulation. She believed everyone should adhere to Ordinance regulations and it was not an owner's prerogative to have a six-foot fence unless there were special conditions. Mrs. Wyse submitted that she knew of no vandalism. She stated that she did regularly pick up litter/trash along her property that borders the stream valley yet she had no six-foot fence. She pointed out that the intersection at their neighborhood's entrance had exceptional police coverage during school hours.

Chairman DiGiulian called upon staff for closing comments.

Ms. Epstein clarified the inspection activity of the Rowe's property explaining that the first Notice of Violation

Page 726, October 8, 2002, (Tape 1), ROBERT ASHLEY ROWE AND LISA M. RAND-ROWE, A 2002-HM-017, continued from Page 725

was verbal, presented in the inspector's official role, and that a written Notice was not given pending the outcome of the variance application. Ms. Epstein maintained that the appellant had not substantiated his claim that the Notice was issued in error.

Mr. Rowe stated that there was sufficient sight distance from the intersection and that his fence did not present a visual impairment. He disagreed with having to lower the fence along the stream bed to four feet because it would be too easy for children to cross over the fence to play in the stormdrain on the other side and he was concerned about possible liability. Mr. Rowe asserted that he had suffered frequent vandalism which the taller fence would discourage.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that Mr. Rowe's testimony today was more appropriate for his variance hearing May 7th, during which the applicant had a fair hearing. He stated that the Board had considered all issues and had unanimously determined to deny the variance application. Mr. Kelley then moved to uphold the Zoning Administrator's determination.

Mr. Pammel seconded the motion, which carried by a 6-0 vote. Mr. Ribble was not present for the vote.

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Page 726 October 8, 2002, (Tape 1), Scheduled case of:

9:30 A.M. ERNEST A. AND EILEEN M. DEMARCO, A 2002-PR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a portion of land abutting appellants' property was previously dedicated for public right-of-way and, therefore, is not subject to density credit. Located at 3428 Woodburn Rd. on approx. 41,857 sq. ft. of land zoned R-1. Providence District. Tax Map 59-1 ((1)) 17 and 59-1 ((8)) (B) A. (def. from 5/7/02 and 7/23/02)

Chairman DiGiulian noted that there was a letter requesting withdrawal of the Ernest A. and Eileen M. DeMarco application.

Mr. Pammel moved to accept the withdrawal of A 2002-PR-002, Ernest A. and Eileen M. DeMarco. Mr. Hammack seconded the motion.

Mr. Hart disclosed that his firm had business with the legal representative for the DeMarcos. He added that should not preclude his participation in the case.

The Board voted 6-0 to accept the withdrawal letter. Mr. Ribble was not present for the vote.

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Page 726 October 8, 2002, (Tape 1), After Agenda Item:

#### Revisions to the Board of Zoning Appeals By-laws

Mr. Hammack stated that he had not had the opportunity to review the documentation. He requested that the decision on adoption of the By-laws be deferred for one week, after which he would be prepared to make a motion. Mr. Hammack moved to defer the decision on the Revisions to the Board of Zoning Appeals By-laws to October 15, 2002. Ms. Gibb seconded the motion.

Mr. Pammel questioned staff concerning Article 3 pertaining to Meetings.

Ms. Langdon said staff had made no changes since the packets were distributed. The Board then decided that they would specifically discuss Article 3 during the October 15<sup>th</sup> decision date.

The motion to defer the decision was approved by a 6-0 vote with Mr. Ribble not present for the vote. //

Request for Additional Time  
Korean Central Presbyterian Church, SPA 83-P-057-3.

Mr. Pammel stated no further extension was warranted, that the church had had sufficient time to make its decision on what action to take and submit the pertaining application. Mr. Pammel then moved to deny an extension of time.

Mr. Kelley seconded the motion and then questioned staff on what the application's status was.

Ms. Langdon explained that if additional time was not approved the SPA -3 would be null and void and the application would revert back to the previous approval, whether SPA-1 or SPA-2, which would be determined through research. She pointed out the additional parking issue and the proposed detention pond required review.

Chairman DiGiulian called upon the applicant's representative to address the issues.

Mr. Robert Mereness, Director of Civil Engineering, CAD-CON Consulting, Inc., explained the time line of the submission for their minor site plan, the issuance of permits, the construction commencement, and the site plan's subsequent expiration during the process to amend the special permit to allow a development modification. He said they sought additional time to re-approve the site plan and complete the improvements. Responding to Mr. Hart, Mr. Mereness said that due to a heavy work load and the complexity of the modification, it would be two weeks before he could resubmit the minor site plan.

Due to citizen concerns and public works issues, Mr. Hart emphatically stated that the site plan's submission and approval should be of primary concern to Mr. Mereness to assure the development process could ensue without further delay.

Again Mr. Mereness apologized to the Board for his inability to complete the filing process within the 60-day additional time already granted him. He submitted that there had been various questions posed at the time which he was unable to answer. He commented on the addition of signage and the revised parking situation.

Chairman DiGiulian repeated the motion which was to deny the request for additional time, and that it had been seconded.

Commenting that the church was urged to move quickly on the processing, Mr. Hammack said he was inclined to grant an additional 60 days rather than deny the motion.

Mr. Pammel stated that he would withdraw his motion if approved by the seconder.

Mr. Kelley commented that he was reluctant to withdraw his second as he believed the applicant had not demonstrated a good faith effort towards completing the procedure. Mr. Kelley then moved to grant the Korean Central Presbyterian Church an additional 60 days additional time to file their minor site plan and complete the process.

Ms. Gibb seconded the motion.

Mr. Kelley requested that staff be vigilant of this applicant's processing to assure no more requests for additional time be submitted. He requested that the Board be apprised of any delay in processing.

Mr. Hart requested that the Board receive any changes.

Ms. Langdon clarified the Board's motion, that it was granting the applicant 60 days additional time, commencing that day, instead of deferring its decision to consider a request for additional time.

The motion to grant 60 days additional time was approved by a 6-0 vote; Mr. Ribble was not present for the vote.

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Page 728 October 8, 2002, (Tape 1), After Agenda Item:

Approval of June 11, 2002 Minutes

Mr. Pammel moved to defer approval of the June 11, 2002 minutes to October 15, 2002 and requested staff to provide a missing page. Mr. Hart seconded the motion, which carried by a 6-0 vote, with Mr. Ribble not present for the vote.

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Page 728 October 8, 2002, (Tape 1), After Agenda Item:

Approval of October 1, 2002 Resolutions

Mr. Pammel and Mr. Hart moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a 6-0 vote, with Mr. Ribble not present for the vote.

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Page 728 October 8, 2002, (Tape 1), After Agenda Item:

The Retention of Outside Legal Counsel

Mr. Kelley so moved which was seconded by Mr. Hart and carried by a 6-0 vote; Mr. Ribble was not present for the vote.

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There being no further business before the Board, Chairman DiGiulian adjourned the meeting at 11:15 a.m.

Minutes by: Paula McFarland

Approved on: July 29, 2003

Regina Thorn Corbett

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 15, 2002. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Nancy Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case

Page 729 October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ST. JAMES EPISCOPAL CHURCH, TRUSTEES, SPA 86-V-052-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 86-V-052 previously approved for a church with a child care center to permit site modifications and building addition. Located at 5614 Old Mill Rd. on approx. 5.12 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4B.

Mr. Kelley gave a disclosure indicating that in the 1980s he and his wife were regular attendees of St. James Episcopal Church; however, they no longer attend church there. Mr. Kelley said he would participate in the public hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Toni McMahon, P.O. Box 2124, Merrifield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment for a previously approved church with a child care center to permit site modifications and building additions which consisted of an administrative wing and hallway to the existing educational building; a connecting gallery from the existing narthex; a new parish hall and a free standing bell tower. The applicant wanted to reconfigure the parking lot area by re-striping it from diagonal parking spaces to perpendicular spaces, deleting the central point of ingress and egress, relocating a bell tower and flag pole, and adding an outdoor patio area at the rear of the church. The proposed new parish hall would contain 3,296 square feet while the new administrative wing and hallway would contain 3,192 square feet. The total square footage on site at final build-out was proposed at 18,766 square feet with an FAR of 0.084 including the parsonage. The applicants also requested a change to the hours of operation for the child care center. Currently the hours were from 7:15 a.m. to 6:15 p.m. Monday through Friday and the request was to open one hour earlier, to operate from 6:15 a.m. to 6:15 p.m. Monday through Friday. No changes were proposed to the number seats in the sanctuary or to the number of children enrolled in the child care center. The applicants proposed to re-stripe the parking area which would reduce the number of on-site spaces to 80 spaces. The minimum number of required parking was 59 spaces; therefore, the number of additional spaces on site would be 21. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and recommended approval of SPA 86-V-052-2. Mr. Bernal noted that revised development conditions dated, October 15, 2002, were distributed to the BZA. The revised development conditions addressed concerns the applicant had in regard to the ingress and egress width in #15 and new lighting in #17.

Mr. Hart asked if the applicant did not get the waiver of the stormwater pond, would some trees have to be removed. Mr. Bernal replied yes, in order to include the pond where it was located on the plat.

Mr. Hart asked would staff suggest that the applicant add other trees along the road if the applicant had to install a pond. Mr. Bernal responded that staff did not put any conditions that would modify screening at that point.

Mr. Hart asked if the applicant did not obtain a waiver for the length of the parking spaces would that mean that the parking lot would have to be larger. Mr. Bernal replied that it could not be larger than indicated on the plat, but they would have to reconfigure the spaces.

Mr. Hart asked if the BZA had previously approved 16½-foot parking spaces. Mr. Bernal replied yes.

Mr. Hart indicated that there were no conditions relating to the bell tower. Mr. Bernal stated that the previous conditions had been carried over and he did not add conditions relating to the bell tower because the neighbors were in support of the application.

Ms. McMahon presented the request as outlined in the statement of justification submitted with the application. She stated that the church had met with the community and the neighbors and received support for the application. Ms. McMahon said they had incorporated significant input from the community. She said they received affirmation from the Mount Vernon Council of Citizens Associations for the application. Ms. McMahon stated that the church had an existing bell, but did not have a bell tower. She said they were currently ringing an existing bell and would continue to ring it as they had in the past. Ms. McMahon said ringing the bell seemed to be an attribute with the neighbors. She said with regard to the parking spaces, the Department of Public Works and Environmental Services (DPWES) had recently been looking toward maximizing green space and minimizing asphalt as much as possible and that was the reason they did the design on the plat. Ms. McMahon said if the 16½-foot parking spaces were not approved by DPWES, the plan was to expand the parking lot on the church side and not the Old Mill Road side of the parking lot in order to give the additional 1½ foot for each space.

Mr. Pammel said he was concerned with the reduction in parking. Ms. McMahon stated that the reason there was a reduction in parking was to add landscaping to the parking lot, to do the perpendicular parking vs. the angled parking because perpendicular parking was considered safer; and to add van accessible parking. She said the church felt having the van accessible parking was an important change that they wanted to make to accommodate the various parishioners. Ms. McMahon said during services you would find that the church currently uses about ¾ of the parking. She said the reduction provides for a better and safer parking situation and greenery on the site.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 86-V-052-2 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. JAMES EPISCOPAL CHURCH, TRUSTEES, SPA 86-V-052-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 86-V-052 previously approved for a church with a child care center to permit site modifications and building addition. Located at 5614 Old Mill Rd. on approx. 5.12 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4B. 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 15, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 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, 5614 Old Mill Road (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 Robert L. Sproles, Professional Engineer, dated January 16, 2002, as revised through August 30, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon approval of this special permit amendment, the hours of operation for the child care center shall not exceed 6:15 a.m. to 6:15 p.m., Monday through Friday.
6. The maximum daily enrollment of the child care center shall be 40 children.
7. The seating capacity of the church shall be limited to 204.
8. A maximum of eighty (80) parking spaces shall be provided. All parking shall be on-site within the designated parking areas as shown on the special permit plat.
9. Prior to Site Plan approval, the applicant shall obtain approval from the Director of DPWES for the length of the parking spaces shown on the special permit plat. If this is not approved, parking geometrics shall be provided as determined by DPWES and shall be in substantial conformance with the special permit plat.
10. Transitional Screening 1 shall be modified in favor of existing trees and vegetation on site and the additional trees and plantings as shown on the special permit amendment plat. Any dead or dying shrubbery shall be replaced with like kind to maintain the existing transitional screening, as determined by the Urban Forester.
11. The barrier requirement shall be waived along all lot lines.
12. A stormwater management system shall be provided to the satisfaction of the Department of Public Works and Environmental Services (DPWES). The applicant shall consult with DPWES to achieve a stormwater management design with the least visual impact possible from the Mount Vernon Memorial Highway. Measures to minimize visual impacts may require creative modification of standards which may be more stringent than the minimum requirements of the Public Facilities Manual, and may include bio-retention ponds (i.e. rain gardens) to the satisfaction and approval of DPWES.
13. At the time of either site plan submission or grading plan submission, whichever occurs first, a tree preservation plan shall be provided for review and approval by the Urban Forestry Division. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate dripline, and condition of all trees 20 inches in diameter and greater, 25 feet on either side of the limits of clearing and grading. The condition analysis shall be prepared by a certified arborist using the eighth edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plan, including methods to be implemented to ensure preservation. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the special permit. Tree preservation shall be implemented pursuant to the study as approved by the Urban Forestry Division.
14. The outdoor play area shall be approximately 2,500 square feet and shall be located as shown on the special permit amendment plat. The number of children on the play area at any one time shall not exceed 25.

Page 732 October 15, 2002, (Tape 1), ST. JAMES EPISCOPAL CHURCH, TRUSTEES, SPA 86-V-052-2, continued from Page 731

15. The limits of clearing and grading shall be no greater than as shown on the special permit plat and shall be strictly adhered to.
16. The architectural design shall be in substantial conformance with the submitted conceptual elevations by Lavigne Associates Architects and Colimore Clarke Associates Architects, dated May 20, 2002, included as Attachment 1 of the development conditions.
17. Any proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixture shall not exceed 12 feet and shall be full cut-off lights.
  - The lights shall be of a design, which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - The lights, except for security lighting, shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
  - There shall be no up-lighting of any of the proposed buildings.

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 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 October 23, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 732 October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JAMES L. HICKERSON, VC 2002-PR-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with each lot having a width of 60.23 ft. Located at 7704 Virginia La. on approx. 34,998 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((7)) 17. (Admin from 8/6/02 and 9/24/02 per appl. req.)

Chairman DiGiulian noted that VC 2002-PR-075 had been administratively moved to November 19, 2002.

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Page 732 October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM L. AND NANCY J. MAHONEY, VC 2002-SU-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from rear lot line. Located at 13187 Blue Fox La. on approx. 5,525 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 35-3 ((23)) (7) 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. William Mahoney, 13187 Blue Fox Lane, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction and enclosure of a screen porch addition to be located 12.1 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 12.9 feet was requested.

Mr. Mahoney presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to build a sundeck on an existing deck. He said the lot was extremely shallow which presented an undue hardship because there was no way he could modify the shallowness of the lot. Mr. Mahoney stated that there were other homes in the neighborhood with sundecks. He said he received approval from the homeowners association and there was no opposition from the neighbors.

Chairman DiGiulian called for speakers.

Allen Krotman, 13185 Blue Fox Lane, came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-SU-112 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM L. AND NANCY J. MAHONEY, VC 2002-SU-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from rear lot line. Located at 13187 Blue Fox La. on approx. 5,525 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 35-3 ((23)) (7) 18. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 15, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The lot is extremely shallow.
3. This is one of the situations in the County where there is an occurrence of a large home on small lot and if expansion is desired, it is impossible to do 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of addition as shown on the plat prepared by Larry N. Scartz, dated, July 15, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. 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 October 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 734 October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. WANDA C. J. MCCAIN, VC 2002-MV-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.2 ft. from front lot line of a corner lot. Located at 8902 Stratford La. on approx. 13,042 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (8) 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. Gregory and Wanda McCain, 8902 Stratford Lane, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 20.2 feet from the front lot line of a

corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 9.8 feet was requested.

Mr. Hart asked about the fence that was located on the plat. Ms. Josiah stated that the fence would be removed.

Mr. McCain presented the variance request as outlined in the statement of justification submitted with the application. He said there was a limited ability to park their vehicles because of the shape of the house. Mr. McCain said they would like to expand their garage. He said other properties had expanded their carports or garages and this would not be out of character for the neighborhood.

Mr. Hart asked if the trees would remain. Mrs. McCain replied yes.

Mr. Ribble asked if there was a reason they could not park their cars on Bassett Street. Ms. McCain stated there was no reason they could not park there, but the other neighbors had always parked in front of their own homes and they just followed suit when they purchased their home.

There were no speakers, and Chairman closed the public hearing.

Mr. Hart moved to approve VC 2002-MV-113 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WANDA C. J. MCCAIN, VC 2002-MV-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.2 ft. from front lot line of a corner lot. Located at 8902 Stratford La. on approx. 13,042 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (8) 5. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 15, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is somewhat unusually shaped and the house is positioned a little closer to the corner than it could have been.
4. The lot has a double front yard with a house with an existing one car garage in a neighborhood where there are many homes with parking accommodations for two cars.
5. The applicant has proposed a two car garage in a logical place.
6. The impact is minimal because of the existing vegetation to the south of where the addition is proposed.
7. The applicant has demonstrated the need for the garage for the second car and there would not be any significant negative impact on the neighbors.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;

- F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Larry N. Scartz, dated July 12, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. 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 October 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 736 October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MEMORIAL HEIGHTS, LLC, VC 2002-MV-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 17.0 ft. from front lot line of a corner lot. Located at 2913 Memorial Heights Dr. on approx. 6,115 sq. ft. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 93-1 ((18)) (E) 182 and 183.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Lane, Fairfax, Virginia, replied that it was.



Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 17 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 13 feet was requested.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She said the subdivision was recorded in 1926 prior to the adoption of the Zoning Ordinance or the subdivision Ordinance. Ms. Kelsey stated that the property was made up of two narrow 25-foot wide lots, which would be combined to make one building lot. She said even with combining the lots, the lot width along Preston Avenue was only 50 feet. Ms. Kelsey stated that within a minimum front yard of 30 feet in this district and a minimum side yard of 12 feet, the buildable width left on the lot would be only 8 feet and it was not feasible to construct a home 8 feet wide. She said because of the depth of the lots, no other variance was needed except the one requested to the front lot line abutting Memorial Heights Drive. Ms. Kelsey explained how the lots met the requirements for a variance. She gave examples of other variances approved in the neighborhood. Ms. Kelsey submitted photographs of recently built homes and a sketch of the proposed house. She requested a waiver of the 8-day waiting period.

Mr. Pammel asked how many lots within the subdivision had houses on 50-foot width lots. Ms. Kelsey replied that most were built on 2 lots, but some were built on 3 lots and others on 4 lots.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MV-110 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MEMORIAL HEIGHTS, LLC, VC 2002-MV-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 17.0 ft. from front lot line of a corner lot. Located at 2913 Memorial Heights Dr. on approx. 6,115 sq. ft. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 93-1 ((18)) (E) 182 and 183. 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 15, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot is narrow with a double 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 the dwelling shown on the plat prepared by Alexandria Surveys International, LLC, dated May 24, 2002, as revised through July 19, 2002, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. 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 October 15, 2002. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. PETER MARK PRINCIOTTO, VC 2002-DR-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an addition 10.2 ft. from front lot line and 6.0 ft. high fence to remain in front yard of a corner lot. Located at 1258 Spring Hill Rd. on approx. 9,644 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((2) 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. Peter Princiotto, 1258 Spring Hill Road, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a second story addition 10.2 feet from the front lot line of a corner

lot. A minimum front yard of 40 feet is required; therefore a variance of 29.8 feet was requested. The applicant also requested a variance to allow a 6-foot high fence to remain the front yard of a corner lot. A maximum fence height of 4 feet is required; therefore, a variance of 2 feet was requested for the fence.

Mr. Princiotto presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to replace a low-sloped roof over the front portion of the house with a higher pitched roof to meet health and safety codes. Mr. Princiotto said the house was built in 1938 and the lot was narrower than what was presently required by the Zoning Ordinance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 2002-DR-141 for the reasons noted in the resolution.

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### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER MARK PRINCIOTTO, VC 2002-DR-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an addition 10.2 ft. from front lot line and 6.0 ft. high fence to remain in front yard of a corner lot. Located at 1258 Spring Hill Rd. on approx. 9,644 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((2) 4. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 15, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant's statement of justification and testimony indicated 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 the addition and fence shown on the plat prepared by Cervantes & Associates, P.C., dated June 27, 2002, as revised through August 27, 2002, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 740 October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT A. BURGOYNE, VCA 77-V-221 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 10.6 ft. and deck 11.8 ft. from side lot line and permit construction of addition 10.8 ft. and bay window 9.7 ft. from side lot line. Located at 6912 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 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. Joe Hodges, Agent, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a dwelling to remain 10.6 feet and a deck 11.8 feet from the side lot line. The applicant also requested a variance to permit the construction of an addition 10.8 feet and a bay window 9.7 feet from the side lot line. A minimum side yard of 20 feet for the primary dwelling with an extension of 3 feet for a bay window and an extension of 5 feet for a deck are required; therefore, variances of 0.6 feet for the dwelling, 3.2 feet for the deck, 9.2 feet for the addition, and 7.3 feet for the bay window were requested.

Mr. Hodges presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was exceptionally narrow at the time of the effective date of the Ordinance. Mr. Hodges said the lot frontage was only 100 feet wide. He said the lot was of substandard size. Mr. Hodges said there was a 10-foot storm drain on the west side of the property. He requested a waiver of the 8-day

waiting period.

Chairman DiGiulian called for speakers.

Amee Vermilye, owner of the subject property, came forward to speak in support of the application. She said the proposed renovation would be in keeping with the rest of the house.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VCA 77-V-221 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT A. BURGOYNE, VCA 77-V-221 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 10.6 ft. and deck 11.8 ft. from side lot line and permit construction of addition 10.8 ft. and bay window 9.7 ft. from side lot line. Located at 6912 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 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 October 15, 2002; 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 for the reasons set forth in the presentation.
3. The dwelling was originally permitted to be shifted to the right because of the 10 foot storm sewer easement.
4. The lot is narrow.
5. The bay window variance is minimal and the other requests were to fill in a recess in the side of the existing dwelling.
6. The impact of the variance will be minimal.
7. The applicant has met the same standards as were addressed in V-221-77.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 dwelling, deck (brick patio), proposed addition and bay window shown on the plat prepared by Alexandria Surveys International, LLC, dated August 6, 2002, as revised through September 5, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hammack moved to waive the 8-day waiting period. Mr. Pammel and Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the votes, 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 October 15, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 742, October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP P. & LI HWA SCIANNA, VC 2002-SP-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line such that side yards total 21.5 ft. Located at 9125 Donna Dean Dr. on approx. 11,137 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((6)) 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. Philip Scianna, 9125 Donna Dean Drive, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 6.0 feet from the side lot line such that side yards total 21.5 feet. A minimum side yard of 8.0 feet and 24.0 feet for total side yards are required; therefore, variances of 2.0 feet for the side yard and 2.5 feet for the total side yards were requested.

Mr. Scianna presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to replace an existing 1-car garage with a 2-car garage. Mr. Scianna stated that there was no other place on the lot for the addition and it would be in keeping with the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-SP-109 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

PHILIP P. & LI HWA SCIANNA, VC 2002-SP-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line such that side yards total 21.5 ft. Located at 9125 Donna Dean Dr. on approx. 11,137 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((6)) 16. 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 15, 2002; 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 location of the structure to the rear portion of the property did not leave any area to enable the applicant to put an addition without seeking 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

744

not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 George M. O'Quinn, dated May 13, 2002, as revised through July 22, 2002, by Bryant L. Robinson, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble 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 October 23, 2002. This date shall be deemed to be the final approval date of this variance.

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Page ~~744~~ 744, October 15, 2002, (Tape 1), Scheduled case of:

9:00 A.M. S. SCOTT AVERY, SP 2002-DR-040 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 10.8 ft. from side lot line. Located at 1921 Kenbar Ct. on approx. 19,527 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((24)) 19B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mr. Hart gave a disclosure, but indicated that he would be able to participate in the hearing.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to minimum yard requirements based on an error in building location to permit an addition to remain 10.8 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 4.2 feet was requested. Ms. Stanfield indicated that a revised affidavit had been submitted.

Mr. Martin presented the request as outlined in the statement of justification submitted with the application. He said the applicant hired a building contractor to build a 2-car garage with a second story room. Mr. Martin said the applicant asked the contractor to inquire how to measure off the side property line. He said after checking with the County they found that there was a measurement that it would be exactly 15 feet from the property line. Mr. Martin said a building permit was issued and construction began, but when the County Inspector came out he indicated that the addition was not 15 feet from the lot line. He said the applicant



ceased construction and terminated the contractor and pursued a special permit. Mr. Martin stated that there was no bad faith with this situation. He said the applicant thought he asked a reasonable question on how you measure from the property line. Mr. Martin said if this were a variance application, it would meet the standards in terms of the character of the neighborhood. He said there were 2 pages of variances in the staff report that had been approved in the neighborhood. Mr. Martin asked for a waiver of the 8-day waiting period.

Mr. Hart asked if there were copies of the information that was submitted to the County. Mr. Martin replied yes.

Ms. Langdon showed a copy of the approved building permit indicating the location of the garage and the 15-foot measurement.

Mr. Hart asked if it was the applicant's position that the contractor changed the line on the plat. Mr. Martin said Mr. Avery asked the contractor, who stated that he did not do it.

Chairman DiGiulian called for speakers.

Daniel Layton, 1919 Kenbar Court, and Bob Matisoff, 1925 Kenbar Court came forward to speak in support of the application. They stated that the addition enhanced the neighborhood and it was in character with the neighborhood.

Jurate Landwehr, 1923 Kenbar Court, came forward to speak in opposition of the application. She said the structure would be inconsistent with the other houses in the neighborhood with respect to the distance between living spaces and would be uncomfortably close to their existing dwelling thereby diminishing its value. Ms. Landwehr presented photographs reflecting the distance between the addition and her property. She submitted a letter in opposition from the owner of 1917 Kenbar Court. Ms. Landwehr stated that there were other neighbors in objection. She said the structure would tower over the property, and the current construction had already increased water runoff. Ms. Landwehr stated that her property was downhill from the subject property.

Mr. Hammack asked how far was the dwelling off the property line. Ms. Landwehr replied 18.6 feet.

Mr. Hammack asked Ms. Landwehr if her house was a two-story dwelling. She replied that it was a staggered house and was two stories on one part.

Mr. Martin stated in his rebuttal that the Landwehrs had requested a variance years ago 2.7 feet from the property line. He submitted an affidavit from the original owner of the applicant's house indicating that he supported the Landwehrs' variance as long as they would grant the same prerogative at a later date for him to build a garage. The affidavit indicated that the Landwehrs agreed to support a garage on the subject property. Mr. Martin stated that the information was passed on to the applicant when he purchased the property in 1989. He submitted photographs reflecting that the addition would not tower over the adjacent property and that there would be no impact on the adjacent house. He submitted a photograph after a recent rainstorm to reflect that there was no runoff on to the adjacent property.

Mr. Hart asked if the bushes were on the applicant's property. Mr. Martin replied that the majority were on the applicant's property.

Mr. Hart asked if the applicant would maintain the existing vegetation. Mr. Martin replied yes.

Mr. Hart asked who was the original contractor. Mr. Martin replied Guiliano Construction.

Mr. Hart stated that he currently had a case against Mr. Guiliano, and he recused himself from the public hearing.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2002-DR-040 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

S. SCOTT AVERY, SP 2002-DR-040 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 10.8 ft. from side lot line. Located at 1921 Kenbar Ct. on approx. 19,527 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((24)) 19B. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 15, 2002; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a two-story addition, as shown on the plat prepared by Larry N. Scartz, dated July 15, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from

the meeting, 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 October 15, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 747 October 15, 2002, (Tape 1), Scheduled case of:

9:30 A.M. CLYDE W. PROFFITT, A 2001-LE-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is maintaining two dwelling units on property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 3122 Clayborne Ave. on approx. 16,816 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (5) 27. (Admin moved from 8/14/01) (Def. from 9/18/01) (Admin moved from 12/11/01 and 2/26/02) (cont'd from 5/21/02 and 7/30/02)

Dolores Kinney, Zoning Administration Division, stated that the appeal was of a determination that the appellant was maintaining two dwellings on the property. She said the appellant contended that the property was nonconforming, meaning that the two dwellings would have to have been established prior to the 1941 Zoning Ordinance. Ms. Kinney stated that an aerial photograph dated 1942 from the National Archives indicated that in 1942 there were no structures on the property; therefore, it was staff's position that the dwellings were not established prior to 1941 and that the property was in violation of the Zoning Ordinance.

Mr. Proffitt stated that this issue was very hard to prove. He said the maps that the County produced showed the property to be vacant, but there were other houses that were on the property and were not shown. Mr. Proffitt stated that he had lived there his entire life. He said he brought Mr. H.L. Short, to speak, who had been building in that area for years. Mr. Proffitt submitted photographs of houses in the area.

Mr. Hart asked Mr. Proffitt if he had any documentation to rebut the information submitted by the staff. Mr. Proffitt replied that he only brought a builder that lived in the area.

Mr. Hart asked if Mr. Short could inform the BZA whether the buildings had been constructed prior to 1941.

Chairman DiGiulian called for speakers.

Harold Short came forward stating that he had resided in the Groveton area his entire life. He said he also owned a construction business. Mr. Short said he did not remember when the building was constructed, but because of his experience with renovations of old homes, the lumber that was used was rough cut lumber and no where in the area was rough cut lumber used to frame houses after the late 1920s. He said that he did not know when the building was built. He presented photographs of types of lumber.

Mr. Hammack asked Mr. Short's date of birth. Mr. Short stated that he was born in 1940.

Joyce Pollard came forward stating that she had researched the property and there was a school built in 1933, but the school did not show on the aerial photograph. Ms. Pollard stated that the County did not have substantial proof. She said there were taxes paid on the property as two dwelling units.

William Shoup, Deputy Zoning Administrator, stated that the 1942 aerial photograph reflected a building whose footprint was consistent with the photograph of Groveton School, which was the school that Ms. Pollard referred to.

Mr. Hart asked Ms. Pollard what was the building on the corner. She replied that it was a large house.

Mr. Shoup said the assessment records clearly indicate when the property was assessed. He said no value was indicated for a building on the property prior to 1941.

Mr. Proffitt submitted photographs of other properties he said were not shown on the aerial photograph.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the Zoning Administrator's determination. He said this case was difficult because

Page 748 October 15, 2002, (Tape 1), CLYDE W. PROFFITT, A 2001-LE-014, continued from Page 747

the adoption of the Ordinance in 1941 was what the appeal is based on. Mr. Hart said the BZA had been given a great deal of information, but he was persuaded that the 1942 aerial photograph from the National Archives was the best evidence presented of the state of affairs on the property. He said that was also consistent with the tax records that were submitted. Mr. Hart said he did not think that the appellant had met his burden that the determination was factually incorrect based on the record.

Mr. Pammel seconded the motion.

Mr. Kelley said he would vote against the motion. He said he trusted the memories of the appellant and particularly Mr. Short and Ms. Pollard. Mr. Kelley said when the BZA upholds the Zoning Administrator they needed overwhelming evidence and to be more than just persuaded, he said they should be absolutely convinced. He said he was not absolutely convinced and would vote against the motion.

Chairman DiGiulian stated that he agreed with Mr. Kelley. He said the testimony given by Mr. Short and Ms. Pollard was compelling and their memory meant a lot.

The motion failed by a vote of 3-3. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voted against the motion. Ms. Gibb was absent from the meeting. However, the determination of the Zoning Administrator was upheld because it takes 4 votes to overrule the Zoning Administrator.

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Page 748 October 15, 2002, (Tape 1), Scheduled case of:

9:30 A.M. JIMMIE AND MARGIE WALKER, A 2002-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a contractor's office and shop, storage yard, junk yard and a heavy equipment and for specialized vehicle sale, rental and service establishment and that such activity has been established in violation of various Zoning Ordinance provisions. Located at 7801 Cinder Bed Rd. on approx. 1.06 ac. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 20. (Def. from 4/30/02 and 9/10/02)

Chairman DiGiulian indicated that the appeal needed to be deferred due to a posting error.

Mr. Hammack moved to defer A 2002-LE-001 to November 12, 2002. Mr. Pammel seconded the motion, which carried by a vote of 6-0.

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Page 748 October 15, 2002, (Tape 1), After Agenda Item:

Approval of June 11, 2002 Minutes

Mr. Pammel moved to approve the June 11, 2002 Minutes. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 748 October 15, 2002, (Tape 1), After Agenda Item:

Revisions to the Board of Zoning Appeals By-laws

Mr. Hammack moved to defer the Revision of BZA Bylaws to October 22, 2002. Mr. Hart and 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 749, October 15, 2002, (Tape 1), After Agenda Item:

Request for Reconsideration  
Kyle P. May, VC 2002-MA-107

There was no motion, therefore, the Request for Reconsideration was denied.

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Page 749, October 15, 2002, (Tape 1), After Agenda Item:

Approval of October 8, 2002 Resolutions

Mr. Kelley moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Regina Thorn Corbett

Approved on: April 8, 2003

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John A. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 22, 2002. The following Board Members were present: Nancy Gibb, Paul Hammack, James Hart, Robert Kelley and John Ribble. John DiGiulian and James Pammel were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 75 October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BETTY M. MEADOWS, VC 2002-DR-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structures to remain 11.5 ft. and 10.8 ft. from side lot line. Located at 11254 Leesburg Pi. on approx. 5.0 ac. of land zoned R-1. Dranesville District. Tax Map 11-2 ((1)) 22C. (In association with SE 2002-PR-012) (def from 10/1/02)

Mr. Hart made a disclosure that he stated would not affect his participation in the hearing.

Lynne Strobel, Agent for applicant, requested a deferral of the application because the Planning Commission deferred the case to November 7, 2002.

Mr. Hammack moved to defer VC 2002-DR-057 to November 12, 2002. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 75 October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DEBBI L. AND RICHARD W. GORHAM, VC 2002-LE-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling and deck 15.2 ft. from side lot line. Located at 6405 Briarmoor La. on approx. 20,000 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((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. William Higham, 6214 Higham Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a dwelling which would replace the existing dwelling. The proposed dwelling would have an attached deck and the dwelling and the deck were proposed to be located 15.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a variance of 4.8 feet was requested for both the deck and the proposed dwelling.

Mr. Higham, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He provided the Board with a history of the property. He explained that the lot was exceptionally narrow and the proposed home could not be constructed without acquiring a variance.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2002-LE-117 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

DEBBI L. AND RICHARD W. GORHAM, VC 2002-LE-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling and deck 15.2 ft. from side lot line. Located at 6405 Briarmoor La. on approx. 20,000 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((15)) 29. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants' testimony indicated that the lot was substandard and had narrow frontage.
3. The lot was rezoned to R-1 several years ago after it had already been recorded.
4. The total variances would be reduced by the new construction proposed and one lot line would not require a variance at all.
5. The variance was in character with the zoning district and 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 a dwelling and deck shown on the plat prepared by Kenneth A. Marceron, dated May 17, 2002, as revised through July 16, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.



Page 753 October 22, 2002, (Tape 1), DEBBI L. AND RICHARD W. GORHAM, VC 2002-LE-117,  
continued from Page 752

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman 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 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 753 October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER & PATTI PICCIANO, VC 2002-SU-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from side lot line. Located at 4525 Silas Hutchinson Dr. on approx. 10,560 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 486.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Picciano, 4525 Silas Hutchinson Drive, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of a two-story addition consisting of a garage with living space overhead to be located 9.3 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 10.7 feet was requested.

Mr. Picciano presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot was substandard. He said the variance would be in character with the neighborhood as most of the homeowners in the area had already constructed similar additions.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2002-SU-116 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER & PATTI PICCIANO, VC 2002-SU-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from side lot line. Located at 4525 Silas Hutchinson Dr. on approx. 10,560 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 486. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is substandard, only 80 feet wide, and is less than the minimum required size of 5 acres for the R-C District.
4. The proposed location of the garage is in the most logical position on the property adjacent to existing curb cut and driveway.
5. The proposed garage will not be a significant negative impact on the neighbors.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by George M. O'Quinn, dated May 24, 2002, as revised through August 1, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

Page ~~755~~ October 22, 2002, (Tape 1), CHRISTOPHER & PATTI PICCIANO, VC 2002-SU-116, continued from Page ~~754~~

The request must specify 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. Chairman 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 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page ~~756~~ October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. RASHNE & GARRETT GREEN, VC 2002-MA-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 30.0 ft. from front lot line and 5.0 ft. and 14.0 ft. from side lot lines. Located at 3643 Tallwood Terr. on approx. 20,743 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 353.

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. Garrett Green, 3643 Tallwood Terrace, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a carport and the expansion of a dining room. The dining room was proposed to be located 14.0 feet from the side lot line and the carport was proposed to be 5.0 feet from the side lot line and 30.0 feet from the front lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet and the front yard requirement is 30.0 feet; therefore, variances of 1.0 foot for the dining room and 5.0 feet for the carport from the side lot line with a 5.0 foot permitted extension from the front lot line were requested.

Mr. Green presented the variance request as outlined in the statement of justification submitted with the application. He explained that the proposed carport was only a one-story structure and would not impose upon adjacent properties. He said the shape of the property was tapered and became smaller toward the rear and the curve at the front of the house resulted in a closer front building restriction line along the sides of the property. He stated that the slope of the property to the rear restricted the construction of the garage.

Ms. Gibb asked how far the front corner of the proposed structure would be from the side lot line. Walter Crain, Architect, answered that the front corner was 17.0 feet from the side lot line.

Mr. Hart asked if the 5.0 foot measurement was taken from the wall of the structure or from the overhang. Mr. Crain replied that the measurement was taken from the wall of the structure. Mr. Hart asked how far the overhang extended into the 5.0 feet measurement. Mr. Crain replied that the overhang was 2.0 feet in length.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 2002-MA-114 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RASHNE & GARRETT GREEN, VC 2002-MA-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 30.0 ft. from front lot line and 5.0 ft. and 14.0 ft. from side lot lines. Located at 3643 Tallwood Terr. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating that the property is an unusual shape.
3. The existing carport is being constructed in the most logical place to provide access to the home.
4. The existing screening between the proposed carport and the neighboring property will ensure that there are no adverse impacts.
5. The variance for the dining room addition is very modest.
6. The front property line curves which makes the third variance of 5.0 feet necessary.
7. The applicants' statement of justification indicated compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of additions, as shown on the plat prepared by Brian W. Smith, dated July 3, 2002, submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman 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 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 157, October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM E. JAGG, VC 2002-MV-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line. Located at 1937 Shiver Dr. on approx. 10,657 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 17.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Jagg, 1937 Shiver Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition to be located 6.6 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 10.0 feet; therefore, a variance of 3.4 feet was requested.

Mr. Jagg presented the variance request as outlined in the statement of justification submitted with the application. He explained that he wanted to replace the existing carport, which was constructed without footers and as a result was sinking into the ground, with a garage. He said the variance was needed to construct a garage large enough to accommodate two cars and additional storage. He stated that the neighbors were in support of the application.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve VC 2002-MV-115 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

WILLIAM E. JAGG, VC 2002-MV-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line. Located at 1937 Shiver Dr. on approx. 10,657 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 17. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant's testimony and statement of justification indicated compliance with the required standards for the granting of a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition (Garage) as shown on the plat prepared by George M. O'Quinn, dated March 13, 2002, as revised through August 1, 2002, as submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page ~~759~~ October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. VALE UNITED METHODIST CHURCH, VC 2002-SU-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from front lot line of a corner lot. Located at 11528 Vale Rd. on approx. 5.62 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((1)) 19. (Concurrent with SPA 73-C-187-3).

9:00 A.M. VALE UNITED METHODIST CHURCH, SPA 73-C-187-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-C-187 previously approved for a church and nursery school to permit building additions and increase in seats. Located at 11528 Vale Rd. on approx. 5.62 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((1)) 19. (Concurrent with VC 2002-SU-123).

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. Carol Cannon, 11528 Vale Road, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the requests as contained in the staff report. The applicants requested approval of a special permit amendment to construct three additions to the existing facility and an increase to the number of seats in the sanctuary which currently had 100 seats. He said Proposed Addition "A" contained 564 square feet and was an expansion to the main entrance and the existing sanctuary. The proposed addition would accommodate additional pews, a redesign to the pulpit and choir areas and make the structure ADA accessible. A total of 180 seats were proposed within the sanctuary.

Proposed Additions "B" and "C" were proposed to expand classrooms and church offices at the western and northern corners of the structure and consisted of two-stories each. Addition "B" comprised of 3,030 square feet, while addition "C" comprised of 456 square feet, for a total of 4,050 square feet of proposed improvements; and an overall total of 14,536 square feet on the site. The proposed F.A.R. at completion was 0.059. The applicants also requested a variance for proposed addition "A" to be located 25.0 feet from the front lot line adjacent to Vale Road rather than the 40.0 feet required by the Zoning Ordinance; therefore, a variance of 15 feet was requested.

It was staff's opinion that given the size of the subject property, the applicant needed to re-locate building addition "A" in order to meet the minimum required front yard and eliminate the need for a variance. Staff concluded that absent the variance requested, the subject special permit application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval-in-part of the application subject only to the deletion or relocation of addition "A" so a variance would not be required.

Mr. Hammack asked if the plat correctly illustrated that part of the original narthex of the church was in violation of the Zoning Ordinance. Mr. Bernal replied that was correct and the violation was 2.0 feet.

Ms. Cannon presented the requests as outlined in the statements of justification submitted with the applications. She explained that in 1993 the church was required to dedicate 30 feet of the land off Vale Road to the Virginia Department of Transportation (VDOT) and in order to accommodate their existing membership they wanted to enlarge the sanctuary by 20.0 feet. She said the proposed expansion would extend to the existing sidewalk at the bottom of the stairs. She said the entry would be turned to the side and on the end would be a window and landscaping would be planted. She stated that the proposed construction would make the church compliant with the Americans for Disability Act (ADA). Ms. Cannon explained that the church was severely over crowded during weddings, funerals, and Sunday services and the expansion would provide additional seating.

Ms. Gibb asked if the Vale Road dedication was implemented with the original special permit application. Ms. Cannon referred to their engineer, Bob Mereness.

Bob Mereness, Cad Con Consulting, 10706 Vander Lane, Manassas, Virginia, explained that the dedication was implemented in 1995 as a part of the original special permit application. He said the Church dedicated approximately 30 feet along Vale Road and some along Fox Mill Road for future road improvements that were probably never going to happen. He stated that due to the dedications, the church lost available front yard along Vale Road to expand the narthex. He said without the proposed addition, the existing narthex violated the 40 foot setback, but under the Ordinance, with regard to a right of way dedication, there was a 20 percent reduction permitted in the yard.

Vice Chairman Ribble called for speakers.

Linda Ashworth, 3200 Comphill Lane, came forward to speak in support. She stated that she had been a member of the church for 26 years. She said the proposal would improve the use of the interior of the church with a more dignified entry for the disabled.

Dave Cannon, 2205 Airness Drive, came forward to speak in support of the application. He stated that the improvements would maintain the integrity and charm of the sanctuary and the church. He said there was a great need to provide access to the church for disabled people.

Larry Amos, 11601 Vale Road, came forward to speak in opposition of the application. He explained that his driveway was a pipe-stem shared by four other homes and was directly opposite the driveway to the church. He said he was opposed to the construction because of the increased vehicular traffic that would be a result of the increase in seating from 100 to 180 seats. He stated that during special services cars often parked along the church driveway or on the lawn and he was worried that overflow parking would affect his property. He submitted pictures of several cars parked along the driveway of the church and on the lawn.

Ms. Cannon, in rebuttal, stated that occasionally there was overflow parking during special services. She stated that the ratio was better than 2 to 1 parking and recently the parking lot had been reconfigured to turn the wheel stops and that added additional spaces. She said the increase in seating would accommodate their existing congregation and did not mean that they would have a large increase in their congregation.

Mr. Hammack asked if she had read the development conditions and was aware that all parking was to be on-site. She replied that she understood and agreed with that condition.

Mr. Hammack asked staff about the development condition that required pictures or other material should be shown to the Department of Public Works and Environmental Services (DPWES) to demonstrate conformance. Susan Langdon, Chief, Special Permit and Variance Branch, explained that it was a historical church and the condition was implemented to keep the additions in keeping with the character of the existing building. She said it was a condition that was taken directly from another application. Mr. Hammack stated that he did not agree that DPWES had power over what materials were used for the addition.

Ms. Cannon referred to their architect, Philip Eddy.

Philip Eddy, Eddy Neckhard Architects, 2401 Paddock Lane, explained that the church wanted to restore the existing clapboard siding and the addition would continue the clapboard siding. Ms. Langdon indicated that the condition would allow the materials the church proposed to use.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 73-C-187-3 to construct the addition no less than 25 feet from the front lot line, with the deletion of the condition that mandated DPWES final approval over what materials were used for the addition and for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VALE UNITED METHODIST CHURCH, SPA 73-C-187-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-C-187 previously approved for a church and nursery school to permit building additions and increase in seats. Located at 11528 Vale Rd. on approx. 5.62 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((1)) 19. (Concurrent with VC 2002-SU-123). 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 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 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, 11528 Vale Road (5.62 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 Consultants, Inc. dated January 9, 2002, as revised through September 23, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of the Non-RUP for the special permit amendment, the maximum number of seats in the main area of worship shall be 180.
6. Parking shall be provided as shown on the Special Permit Plat. All parking for the church shall be on site.
7. The maximum daily enrollment for the nursery school shall be 36 children or such lower number as may be approved by the Health Department.
8. The maximum number of employees shall be limited to 9.

9. The maximum hours of operation for the nursery school shall be from 9:30 a.m. to 12:30 p.m., Monday through Friday.
10. A maximum of twenty (20) children shall use the play area at any one time.
11. Transitional Screening 3 (50 ft.) shall be maintained along the northwestern, northeastern and southern lot lines abutting residentially-used properties. However, the northern corner of the drainfield may extend into this screening yard as shown on the special permit plat. Existing vegetation may be used to partially satisfy the transitional screening requirement provided it is supplemented to meet the equivalent of Transition Screening 3 as approved by the Urban Forestry Branch. Any dead or dying vegetation shall be replaced with like kind to maintain the existing transitional screening.
12. Along the southeastern property line, the existing vegetation shall be retained and the supplemental vegetation maintained to meet the equivalent of Transitional Screening 1 in order to minimize the adverse impacts of the parking area and building mass on adjacent residences.
13. The barrier requirement shall be waived along all property lines.
14. Existing foundation plantings shall be maintained around the building to minimize adverse visual impacts on the adjacent residences. Additional foundation plantings shall be provided along the perimeter of the new additions. The number and species of plantings shall be as approved by the Urban Forester.
15. The existing entrance drive to the property from Vale Road shall remain aligned with the pipestem driveways on the southeast side of Vale Road and shall remain paved. The landscaped island located within the vehicular turnaround shall be maintained and there shall be no parking in that area.
16. Any lighting of the parking area shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall be focused directly on to the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - All lights shall be full cut off.
17. All trash shall be stored on-site in appropriate containers and shall be screened from view from the adjacent single family dwellings.
18. Signs shall be permitted in accordance with Article 12, Signs.
19. The proposed additions shall consist of materials that are the same style, material and color as the existing structure as to maintain the rustic architectural character of the existing church.

These conditions shall incorporate and supersede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special

permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman 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 30, 2002. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to approve VC 2002-SU-123 with the deletion of the condition that mandated DPWES final approval over what materials were used for the addition and for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VALE UNITED METHODIST CHURCH, VC 2002-SU-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. **(THE BOARD APPROVED 25.0 FEET)** from front lot line of a corner lot. Located at 11528 Vale Rd. on approx. 5.62 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((1)) 19. (Concurrent with SPA 73-C-187-3). 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 October 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The church dedicated 30 feet of property along Vale Road and even though it may never be developed it was a front yard the church needed in which to expand and it is a condition which justifies relief for the variance sought.
3. The variance request extends out to almost the same building footprint as the current structure.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the church and additions as shown on the plat prepared by CAD-CON Consulting, Inc., dated January 9, 2002, as revised through September 23, 2002, **(THE BOARD APPROVED 25.0 FEET)** submitted with this application and is not transferable to other land.
2. The proposed additions shall consist of materials that are the same style, material and color as the existing structure as to maintain the rustic architectural character of the existing church.

Pursuant to Sect 1.8-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman 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 30, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 764 October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF ALL SAINTS EPISCOPAL CHURCH-SHARON CHAPEL, SP 2002-LE-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance for an existing church to permit a building addition and to allow a reduction to minimum yard requirements based on error in building location to permit addition to remain 12.75 ft. from side lot line. Located at 3421 Franconia Rd. on approx. 5.95 ac. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 49 and 82-4 ((1)) 40.

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 Schoen, 6012 Sumner Road, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicants requested approval to allow a 902 square foot building addition to the rear of the church and to allow a reduction to the minimum yard requirements based on an error in building location to

permit an addition to remain 12.75 feet from the side lot line where 16.1 feet was required by a building permit and 15 feet was required by the Zoning Ordinance. Staff recommended approval of the application.

Mr. Schoen, agent for applicants, explained the proposed addition would be the enclosure of an existing brick patio. He stated that an addition was constructed in error in 1970 and requested that the addition be allowed to remain as the church already needed to expand to allow more space.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2002-LE-041 for the reason stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

TRUSTEES OF ALL SAINTS EPISCOPAL CHURCH-SHARON CHAPEL, SP 2002-LE-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance for an existing church to permit a building addition and to allow a reduction to minimum yard requirements based on error in building location to permit addition to remain 12.75 ft. from side lot line. Located at 3421 Franconia Rd. on approx. 5.95 ac. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 49 and 82-4 ((1)) 40. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The church has existed for many years.
3. The addition is of minimal impact.
4. The addition has been in place for many years, it doesn't seem to have caused a problem and it is on a corner of the site where there will not be any impact on the adjacent properties.

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 and 18-914 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, 3421 Franconia Road (5.95 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 Stevenson and Stewart, Inc., dated July 24, 2002, as signed July 30, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be one hundred fifty-six (156).
6. Parking shall be provided in the areas shown on the Special Permit Amendment Plat. All parking for the church shall be on site.
7. Transitional screening shall be modified along a portion of the southern lot line in favor of the existing vegetation. Transitional screening shall be waived along the northern lot line, a portion of the eastern lot line, a portion of the western lot line and the remainder of the southern lot line.
8. The barrier requirement shall be waived along the northern and southern lot lines. A barrier shall be provided along the southern portion of the eastern and western lot lines, as shown on the special permit plat.
9. Interior and peripheral parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance and as determined by DPWES.
10. Any proposed new lighting on the site shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed 12 feet and shall be full cut-off lights.
  - The lights shall be of a design which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, except for security lighting directly adjacent to the building.
  - There shall be no up-lighting of the proposed or existing building.
11. If Stormwater Management/Best Management Practices (BMPs) requirements are not waived, such facilities shall be provided outside the transitional screening areas and cemetery as determined by DPWES.
12. Tree cover shall be provided in Article 13 of the Zoning Ordinance. Final determination regarding compliance with these requirements shall be as determined by DPWES at the time of site plan review.
13. All signs on the property shall conform to the provisions of Article 12.
14. The proposed addition shall consist of materials that are the same style, material and color as the existing structure. Photos and/or colored elevations that indicate the existing and proposed material, style and color shall be provided to DPWES at the time of building permit submission to demonstrate consistency.
15. The limits of clearing and grading shall be no greater than shown on the special permit plat.
16. Temporary construction easements shall be provided along Franconia Road, as needed and as determined by the Department of Transportation and/or the Virginia Department of Transportation (VDOT).

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be

Page 767 October 22, 2002, (Tape 1), TRUSTEES OF ALL SAINTS EPISCOPAL CHURCH-SHARON CHAPEL, SP 2002-LE-041, continued from Page 760

responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb and Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman 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 30, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 767 October 22, 2002, (Tape 1), Scheduled case of:

9:00 A.M. NANCY BOSHOVEN, SP 2002-SU-042 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 5622 Rocky Run Dr. on approx. 11,355 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((7)) 28.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Boshoven, 5622 Rocky Run Drive, Centreville, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested approval to permit modification to the limitations on the keeping of animals to allow 3 to 4 dogs on a lot containing 11,355 square feet. The Zoning Ordinance requires a lot area of at least 12,500 square feet for the keeping of 3 to 4 adult dogs; therefore, the special permit was requested for the keeping of 1 to 2 dogs greater than what was permitted.

Ms. Boshoven presented the special permit application as outlined in the statement of justification submitted with the application. She stated that she purchased the home four years ago specifically because of the way the house was sited on the lot with a large backyard area which would allow room for her to keep her three Irish Setter show dogs. She said her dogs were pets and indoor animals and were not outside without her present. She stated that she considered the dogs to be her children and she maintained their grooming herself and cleaned the yard daily. Ms. Boshoven indicated that none of her neighbors had ever come to her with any problems regarding the dogs and she was unaware of who made the complaint. She said the number of dogs cited on the complaint was inaccurate and she had never owned 6 show dogs nor would she ever due to the extreme work involved in their maintenance.

Ms. Gibb asked for an explanation of the kennel set up. Ms. Boshoven answered that there were four runs and the one closest to the house was used for housing supplies for the dogs. Ms. Gibb asked when the dogs were in the runs. Ms. Boshoven replied that the dogs went out at 6:30 in the morning and she let them run for a short period of time around the yard to get exercise. She said she immediately cleaned and bleached the runs to ensure there would be no odor. She explained the process was repeated under her supervision at noon, 5:00 p.m. and at bedtime.

Ms. Gibb asked the applicant about her request for an additional dog to be allowed if she had guests visiting. Ms. Boshoven explained that she thought the complaint stemmed from an occasion where a visitor had stayed with her for a day or two and this person had brought her dogs with her; therefore, she requested permission for an additional dog for visiting purposes.

Ms. Gibb asked how the Zoning Ordinance related to dogs that visited residences. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the visiting dogs were considered temporary and were allowed under the Ordinance.

Vice Chairman Ribble called for speakers.

Linda Joyce-Shottal, 5624 Rocky Run Drive, came forward to speak in support of the application. She stated that she had two young children and the back of her house was to the applicant's backyard and she has never had any problems with the dogs.

Katie Wruk, 5604 Rocky Run Drive, came forward to speak in support of the application. She said she was not aware that the applicant owned dogs until she saw her walking them. She stated that she was home during the day and she had never heard noise from the applicant's dogs. She mentioned that Gary Lamb, another adjacent property owner informed her that he had no problem with the dogs.

Frank Corbin, 5614 Rocky Run Drive, came forward to speak in support of the application. He said he was retired and home during the day and he never had a problem with the dogs.

(Name inaudible) came forward to speak in support of the application. She voiced her support for the application and stated that she rarely heard the applicant's dogs.

Patricia Oglinsky, 5630 Rocky Run Drive, came forward to speak in opposition of the application. She stated that her property faced the rear of the applicant's property and the noise from the dogs prevented her family from utilizing their front porch. She said there were four dogs living on the property and additional dogs arrived on the property at different times and the number usually varied from two to six. She stated that she had several conversations with the applicant about the dogs but no action was taken. Ms. Oglinsky said barking could be heard from inside the applicant's home between 5:00 a.m. and 6:00 a.m. and she was concerned about being able to sell her home with all of the noise from the applicant's property. She informed the Board that the dog kennels violated the covenants of the subdivision.

Susan Oglinsky, 5630 Rocky Run Drive, came forward to speak in opposition. She said the noise from the dogs caused adverse impacts on the property. She reiterated that the dog kennels violated the covenants of the subdivision.

Ms. Boshoven, in rebuttal, contended that the Oglinsky family never approached her to complain about the noise and if they had, she would have done something to mitigate the problem. She said the dogs were not fed in the morning but they did bark in the evenings when she fed them only until they received their food.

Ms. Gibb asked the applicant how old were the dogs. Ms. Boshoven replied 11, 6 and 4 years of age.

Mr. Pammel asked the applicant if she heard dogs barking at 5:00 a.m. Ms. Boshoven replied that she did not and if she did she would investigate the situation and make them stop.

Ms. Gibb moved to approve SP 2002-SU-042 with the amendment of Development Condition #3 to indicate that the approval was for the applicant's existing three dogs only and to delete any mention of a visiting dog and for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY BOSHOVEN, SP 2002-SU-042 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 5622 Rocky Run Dr. on approx. 11,355 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((7)) 28. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and



WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 2002; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The neighbor who faces the backyard of the subject property raised valid issues.
- 3. One of the dogs is 11 years of age.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 5622 Rocky Run Drive (11,355 square feet), shown on the plat prepared by Central Maryland Surveyors, as revised by Nancy Boshoven, dated November September 17, 1998, as revised by Nancy Boshoven through July 11, 2002, 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 dogs shall not be replaced except that two (2) dogs may be kept on the property in accordance with the Zoning Ordinance.
- 4. The yard areas where dogs are housed shall be cleaned of animal waste daily, in a method which prevents odors from reaching adjacent properties, and 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.

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman 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 30, 2002. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. MARGARET BURNETTE, A 2002-MV-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that an accessory use (patio) has been constructed in the R-3 District on a lot which does not have a principal use, in violation of Zoning Ordinance provisions. Located at 8719 Thomas J. Stockton Pkwy. on approx. 8,894 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((6)) 12A.

Mike Adams, Zoning Administration Division, said the appeal was of the Zoning Administrator's determination that an accessory use, a patio, had been constructed in the R-3 district on a lot which did not have a principle use which was in violation of the Zoning Ordinance. The subject property, Lot 12A, was a vacant lot and was adjacent to Hunting Creek. The appellant's principle structure was located on Lot 12. The patio consisted of 4x4 weatherized wood with brick legs laid within and secured with stone dust. The patio covered approximately 400 square feet. The Zoning Ordinance permits accessory uses and structures

778

in any district but only in connection with, incidental to, and on the same lot with the principle use or structure which was permitted with such district. Although a patio was typically considered an accessory use, the appellant's patio structure on Lot 12A was not in conjunction, connected with, incidental to, on the same lot with the principle use or structure. As such, the appellant's patio on Lot A was not in compliance with the Zoning Ordinance. Staff requested the Board uphold the violation.

Mr. Hammack asked what could be placed on Lot 12A. William E. Shoup, Deputy Zoning Administrator, explained that no permanent structures could be located on the lot because there was no primary use.

Mr. Ribble asked how the violation was discovered. Mr. Adams stated that there was an anonymous complaint filed.

Margaret Burnette, appellant, explained that the lot was overgrown and not being used so she cleared the overgrown vegetation and constructed the patio close to the dock to be able to enjoy the property. She stated that she did not know that it was a violation of the Zoning Ordinance.

Mr. Hart noted that the lots and outlots had identical tax map numbers and asked if all of the owners of the lots owned the outlots. Ms. Burnette replied that she thought most of the lot owners owned the outlots across from their property. Mr. Hart asked the appellant if she had been paying taxes on the outlot. Ms. Burnette replied that she had been paying \$10,000 per year in taxes.

Mr. Kelley asked staff if the appellant could apply for a variance to allow the patio to remain. Mr. Shoup explained that the situation was too far stretched to be viable for a variance.

Mr. Hart asked if the outlots and lots could be considered one parcel. Mr. Shoup explained that the only way they could be considered one parcel was if they pre-dated the road dividing them and that was not the case.

There was extensive conversation between the Board and staff pertaining to the question if anything temporary or permanent could be constructed on Lot 12A and whether or not the dock was a legal structure because it was permanently attached to the outlot.

Vice Chairman Ribble called for speakers.

Mike Gillespie, 2230 Wittington Boulevard, came forward to speak in support of the appellant. He said he had no objection with the patio nor the general maintenance of the outlot. He said many of the other outlots had been cleared to a much larger degree and a large home was even constructed on one of the outlots. He submitted photographs from Stockton Parkway toward the creek illustrating the maintenance of several of the other outlots.

Mr. Ribble suggested that the Board continue the appeal to a different date and requested additional information from staff as to whether or not building permits had been sought for all of the docks on all of the outlots in the area, information regarding the conveyance of the owners of the lots to the outlots, if there were any similar violations in the area, a history of the Subdivision Ordinance for the outlots and lots and copies of the Chesapeake Bay Act.

Mr. Kelley moved to continue appeal A 2002-MV-027 to January 7, 2002, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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9:30 A.M. MICHAEL P. D'AIUTO, A 2002-PR-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a car wash in the I-5 District without Special Exception approval in violation of Zoning Ordinance provisions. Located at 1524V Spring Hill Rd. on approx. 5.61 ac. of land zoned I-5. Providence District. Tax Map 29-3 ((1)) 60C. (Def for decision only from 9/24/02)

Mr. Hart stated that one of the things the Board was waiting to review before making a motion was the 1989 case material. He explained that the amendment to the Ordinance and the definitions prohibited was a physical structure rather than activity and did not deal in any way with waxing of cars or detailing. He said what would require a Special Exception was a physical structure of some sort which contained facilities for washing motor vehicles by hand or by using production line automated or semi-automated methods for washing, whether or not employing a chain conveyer, blower, or steam cleaning or a similar mechanical device. He said he did not believe that the facility was a structure or a portion of a structure and the car washing area was in the vicinity of the faucet outside of the building and that the bucket and hose was not a structure under the Ordinance. He said the area of the business was approximately 800 square feet and completely within a larger tenant space for other automobile associated activity and that he was not convinced the use was specifically a car wash.

Mr. Hart moved to reverse the determination of the Zoning Administrator regarding appeal A 2002-PR-019. Mr. Kelley seconded the motion, which carried by a vote of 4-0. Mr. Hammack recused himself from the vote as he was not present for the September 24, 2002 hearing, and Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 771, October 22, 2002, (Tape 1), After Agenda Item:

Revisions to the Board of Zoning Appeals By-laws

Mr. Hammack deferred the item to November 5, 2002. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 771, October 22, 2002, (Tape 1), After Agenda Items:

Approval of October 15, 2002 Resolutions

Mr. Kelley moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 771, October 22, 2002, (Tape 1), After Agenda Items:

Intent to Defer  
Marvin D. and Jean Toombs, A 2002-MA-022

Mr. Hart moved to approve the intent to defer for A 2002-MA-022 to January 14, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. 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 12:35 p.m.

Minutes by: Lori M. Mallam

Approved on: August 5, 2003

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 29, 2002. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; James Hart; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 773 October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-S-098 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 83-D-098 previously approved for church (temple) and related facilities to permit change in land area, building addition and site modifications. Located at 7250 Ox Rd. on approx. 5.49 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 7E pt. and 7F. (def from 10/1/02 and 10/8/02 for decision only)

Mr. Satvinder S. Sandhu, a trustee for the Sikh Foundation of Virginia, reaffirmed the affidavit. He noted their application was deferred from October 8, 2002, to comply with the neighbor's request for a fence. He submitted a copy of the Fence Agreement for the record.

John W. Farrell, Esquire, agent for the applicant, explained the redesigned interparcel access for the driveway. He submitted a plat evidencing the agreement and location of the fence. Responding to Ms. Gibb's questions, he noted the type and design of the fence and that it met the requirements pursuant to the Division Fence Law. Mr. Farrell discussed the transitional screening Ordinance language as contained in the Zoning Ordinance and he maintained that the fence prohibited trespassing; thereby, meeting the neighbors' criteria. Mr. Farrell discussed the clearing and grading particulars of the site.

Ms. Susan Langdon, Chief, Special Permit and Variance Branch, stated staff's approval of the purpose and location of the fence.

As it contained specific language regarding clearing and grading, Ms. Jennifer Josiah, Staff Coordinator, pointed out staff's addendum to Development Condition #10. She noted Mr. Farrell's objection.

Mr. Farrell stated his objection to staff's addendum and pointed out the driveway's plane and the slope of the hill. He maintained that 10 feet was an unrealistic limit for the clearing and grading.

Staff had no issue with the driveway's layout, explained Ms. Langdon, but was concerned over additional vegetation being removed. The proposed language held the applicant to limits for clearing and grading which would afford the most amount of vegetation to be saved. Presenting a copy of staff's language to Ms. Gibb, Ms. Langdon pointed out the changes.

In response to Mr. Hart's question, Ms. Josiah explained the applicant's parking provision.

Regarding the fence as addressed by Provision #8, Mr. Hart voiced his understanding of the language.

To allow staff and Mr. Farrell time to clarify Development Condition 8's language, Chairman DiGiulian announced that the decision was deferred till later during the public hearing. He then called the second case on the Agenda.

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Page 773 October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BRIAN G. AND MARY K. DALY, VC 2002-SP-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.4 ft. from rear lot line. Located at 6302 Clear Springs Ct. on approx. 9,985 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 65-2 ((7)) 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. Mr. Brian Daly, 6302 Clear Springs Court, Clifton, Virginia, replied that it was.

Ms. Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought to permit construction of an addition, consisting of a screened porch, 17.4 feet from the rear lot line. A 7.6-foot variance was requested.

Mr. Daly presented the variance request as outlined in the staff report. He stated that the deck would be screened and the footprint would be smaller than the original deck. He explained the circumstances which limited where a deck could be placed and that created setback encroachments because of the location of his house on the lot. Mr. Daly said his lot was a corner lot on a cul-de-sac with a stormwater management pond at the rear. Mr. Daly submitted that these facts warranted a variance.

Responding to Mr. Hart's request to comment on a neighbor's letter, Mr. Daly pointed out that the Vallieres had cited no negative impact nor registered any objection with his variance. Rather, Mr. Daly said, their letter raised issues concerning Ordinance requirements and pointed out that the community, because of unusual shaped lots, shared similar problems as that of the Dalys with stringent regulations and building restrictions. The Vallieres appeared to have issues with the County and were requesting relief for everybody in the neighborhood, Mr. Daly submitted.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2002-SP-118 for the reasons set forth in the Resolution.

Referring to the Vallieres' letter, Mr. Pammel pointed out that the Board of Zoning Appeals was specifically authorized by the Code of Virginia to make determinations on relative cases, such as the Dalys, where there were unusual lot configurations and/or extreme topographical concerns, and if Ordinance conditions were met, to review and grant such cases per the conditions of the Ordinance.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN G. AND MARY K. DALY, VC 2002-SP-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.4 ft. from rear lot line. Located at 6302 Clear Springs Ct. on approx. 9,985 sq. ft. of land zoned R-3 (Cluster) WS. Springfield District. Tax Map 65-2 ((7)) 112. 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 29, 2002; 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 irregular shape.
3. The back yard is exceedingly shallow because the house was placed towards the rear and there's a cul-de-sac in front of the property.
4. Approval of the variance does not change the character of the zoning district.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by Ernest S. Holzworth, dated June 20, 2002, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.
4. The applicant shall obtain an administrative reduction for the existing deck prior to approval of a building permit for the addition.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 776 October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. BRUCE BRASHER, VC 2002-SP-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.4 ft. from side lot line. Located at 6006 Carrindale Ct. on approx. 10,318 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((8)) 193.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Bruce Brasher, 6006 Carrindale Court, Burke, Virginia, replied that it was.

Ms. Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought to permit construction of an addition 4.4 feet from the side lot line which would require a 3.6-foot variance. Ms. Stanfield stated that the adjoining residence to the west on Lot 192 was located approximately 19.0 feet from the shared lot line.

Mr. Brasher presented the variance request as outlined in the staff report and explained that the addition would be constructed over an existing concrete driveway. Because of his lot's shallowness and where his home was located on the lot; the variance would affect only a small back corner of the proposed addition.

Mr. Pammel voiced his concern over the variance's proximity to the property line and suggested two different reductions to the floor plan.

Mr. Brasher stated that with the slope of the roofline, he was unsure of the architectural aesthetics. He then submitted that reducing the width to 13 feet might not allow for a functional garage.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2002-SP-121 but stipulated the approval was contingent upon the minimum dimension being five feet at the rear corner adjacent to Lot 192 and requested the resubmission of a revised plat.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRUCE BRASHER, VC 2002-SP-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.4 ft. **(THE BZA APPROVED 5.0 FT.)** from side lot line. Located at 6006 Carrindale Ct. on approx. 10,318 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((8)) 193. 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 29, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The house's location at the rear of the lot limits where an addition can be placed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;



- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 George M. O'Quinn, dated June 18, 2002, as revised through November 1, 2002 submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 2002. This date shall be deemed to be the final approval date of this variance.

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Page 777 October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JEANNE B. HERRICK, SP 2002-PR-033 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 2207 Arden St. on approx. 8,613 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4 ((24)) (2) 10. (Admin moved from 9/17/02)

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 Barnes Lawson, Jr., Esquire, Lawson & Frank, 6045 Wilson Boulevard, Suite 100N, Arlington, Virginia, replied that it was.

Ms. Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She explained that the applicant sought to permit an accessory dwelling unit, constructed in an area previously used as a garage, to remain. Staff recommended approval of the proposed accessory dwelling unit.

Mr. Lawson briefly described the property's history. He explained the applicant's financial situation and stressed her need to supplement a fixed income. Mr. Lawson submitted a letter from Supervisor Connolly's office in support of the requested special permit and a copy of the Board of Supervisors' policy on Accessory Dwelling Units.

Responding to Mr. Hammack's question, Ms. Susan Langdon, Chief, Special Permit and Variance Branch, explained staff's position on the Accessory Dwelling Unit recordation requirement. She noted that subdivision variances were required to record development conditions in the land records.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2002-PR-033 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

JEANNE B. HERRICK, SP 2002-PR-033 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 2207 Arden St. on approx. 8,613 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4 ((24)) (2) 10. (Admin moved from 9/17/02) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The record contains a letter of support from the Supervisor of the Providence District, Gerald Connolly.
3. Staff recommended approval.
4. The Board of Supervisors' policy encourages these types of units.

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).8-918 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, 2207 Arden Street (8,613 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 Bartlett and Chavez, Inc., P.C., dated July 28, 1981, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than 2 bedrooms.
6. There shall be 2 parking spaces provided on the site as shown on the special permit plat.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance, or the range shall be removed and the structure no longer used as an accessory dwelling unit.
10. The applicant shall obtain Building Permits for the interior renovations to the garage and approval of final inspections.
11. These development conditions shall be recorded among the land records of Fairfax County for the subject property.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page 779, October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MOHAMMAD HUMAYN SULTANY, SP 2002-LE-030 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6518 Delia Dr. on approx. 5,661 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((8)) 42. (Admin. moved from 8/6) (Def dec. from 9/17/02)

The applicant's son, speaking and translating for his father, informed the Board of the modifications made to resolve the zoning violations. They agreed to any terms imposed by the Board, he stated, and would meet with County inspectors for follow-up inspections.

Chairman DiGiulian called for speakers.

Mr. Bill Driscoll, no address given, objected to the variance. He called attention to the letter of opposition from their Homeowners Association. He cited sanitation conditions, fire and safety violations, and building code violations. Mr. Driscoll professed that the Sultany's had a long history of incidents that were resolved only after pressure from the homeowners association and he was skeptical that the issues would remain resolved because of past experiences. If the variance were approved, Mr. Driscoll asked whom to contact if the Sultany's violated the approval conditions.

Chairman DiGiulian advised Mr. Driscoll of the staff contacts for zoning violations and then called Mr. Sultany, Jr., for rebuttal.

Mr. Sultany, Jr., affirmed that all the changes suggested by the County Inspector were made after final inspections were approved. He pointed out that they installed a fence with a gate, and that they modified it to meet the covenants after being notified by the Homeowners Association's President. Mr. Sultany maintained that his family would abide by all the requirements imposed by the Board.

Chairman DiGiulian closed the public hearing.

Mr. Kelley commented that the Board had not directed the applicant to take care of any issues. Zoning issues, questions concerning the sizes of the coups and the wiring of electricity to them, and several health issues concerned the Board, he explained. He clarified that although no violations were imposed, that did not guarantee an approval. Mr. Kelley moved to deny SP 2002-LE-030 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

MOHAMMAD HUMAYN SULTANY, SP 2002-LE-030 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6518 Delia Dr. on approx. 5,661 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((8)) 42. (Admin. moved from 8/6) (Def dec. from 9/17/02) 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 29, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant had not met the requirements under the Sect. 8-917 of the Zoning Ordinance pertaining to the keeping of animals.

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).8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Gibb seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 2002.

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Page 781 October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CARL E. COX, TRUSTEE, VC 2002-MA-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 4.0 ft. from side lot line and 27.0 ft. from front lot line of a corner lot and deck 12.0 ft. from side lot line. Located at 6327 Lakeview Dr. on approx. 16,183 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Carl E. Cox, 6327 Lakeview Drive, Falls Church, Virginia, replied that it was.

Ms. Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She explained that the applicant sought to permit construction of additions 4.0 feet from the side lot line and 27.0 feet from the front lot line of a corner lot and to permit a deck 12.0 feet from the side lot line. She stated that three variances, 11.0 feet, 3.0 feet, and 3.0 feet, respectively, were requested. Ms. Josiah noted that the adjacent residence to the north on Lot 24 was located approximately 10.0 feet from the shared lot line, and the adjacent residences to the south on Lots 29 and 30 were located 47.0 feet and 40.2 feet, respectively, from Aqua Terrace.

Mr. Cox stated that his desire was to screen his property, as much as possible, from the heavily traveled roadway, Aqua Terrace. He briefly explained the practical and aesthetic reasons to place the improvements in the specific locations. He informed the Board of his desire for a garden area for both cuttings and vegetables. The three variances, Mr. Cox submitted, were necessary to accomplish the improvements.

Mr. Hammack commented that Mr. Cox's reasons for the variances seemed more a matter of preference or convenience and not a matter of hardship. He noted that the adjoining neighbor's property would be severely impacted by the 41 feet of construction improvements 4 feet from their lot line.

His renovation plans, Mr. Cox said, were discussed with the adjoining property owner as she was the most impacted, and that her approval was evident in her letter of support which was submitted for the record. Mr. Cox added that his neighbor was more concerned that her lakefront view would be blocked if the new neighbor across the street were to build a bigger house. Mr. Cox responded to Mr. Hammack's questions concerning the size and configuration plans for his carport and the requested screening whether it was vegetative or some type of wall.

In response to Mr. Ribble's question, he explained that an architect, who was head of the Lake Barcroft Association Architectural Committee, had assisted him with the design plans but there were no architectural renderings at this initial planning stage. He explained the plans for his garden and pointed out exactly where several trees were located.

In response to Mr. Hart's question, Ms. Josiah clarified that the property already had two variances approved back in the 1950s.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Before making his motion, Mr. Ribble commented that the architect's presence would have been helpful to verify that there was no other feasible plan for the renovations other than the one presented. He doubted that there was no other way to have reasonable use of the property and that the applicant's plans appeared more like a wish list. Mr. Ribble moved to deny VC 2002-MA-120 for the reasons set forth in the Resolution.

Mr. Hammack stated that he had no issue with the carport but believed the two-story addition seemed more a matter of convenience. He submitted that a revised plan that met setback requirements could utilize the area more effectively and still allow for a substantial garden.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARL E. COX, TRUSTEE, VC 2002-MA-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 4.0 ft. from side lot line and 27.0 ft. from front lot line of a corner lot and deck 12.0 ft. from side lot line. Located at 6327 Lakeview Dr. on approx. 16,183 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 25. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 2002, and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant failed to substantiate that there is no other design/layout for the proposed improvements that would require less of a variance.
3. The applicant has not met the standards prescribed for the granting of a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

Mr. Hart moved to waive the 12-month waiting period for re-filing an application.

The motion was seconded by Mr. Hammack and carried by a 7-0 vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 2002.

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Page ~~783~~ 782, October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF SEOUL PRESBYTERIAN CHURCH, SPA 95-S-029 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-029 previously approved for a church and related facilities to permit increase in land area, building additions and site modifications. Located at 6426 Ox Rd. on approx. 15.45 ac. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((1)) 35 and 36.

Chairman DiGiulian announced that this application had been administratively moved to December 17, 2002.

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Page ~~783~~ 782, October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF FIRST BAPTIST CHURCH OF FOX CHASE, SP 2002-MA-038 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4215 Pine La. on approx. 1.78 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 63. (Moved from 10/8/02)

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. Pastor David Hunter, agent for the applicant, P.O. Box 2344, Dale City, Virginia, replied that it was.

Ms. Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She explained that the applicant requested a special permit to construct a place of worship, a 240-seat church with 84 parking spaces. She noted that the applicant proposed to pipe an existing drainage swale and place parking spaces above it, and that the site would be accessed via a 30-foot wide paved entrance off Pine Lane with the applicant improving Pine Lane along the site's frontage to provide a right-turn taper into the site. She stated that the applicant would preserve existing trees along the lot line, install vegetation in the parking lot, provide screen plantings throughout the site, and had a stormwater management facility through bio-retention located in the northeastern portion of the site. Ms. Josiah stated that issues raised by staff had been addressed and therefore, staff recommended approval.

Pastor Hunter briefly explained the proposed plan to construct a sanctuary with on-site parking spaces. He pointed out that the applicant had addressed all staff concerns; had provided additional landscaping, sidewalks, tree save, had addressed stormwater management issues and provided architectural renderings. Responding to Mr. Hart's question about a stream visible on the plat, Mr. Hunter explained that this intermittent tributary off of Turkey Cock Run would be piped as suggested by staff.

Chairman DiGiulian called for speakers.

Mr. Khoi Nguyen, 6431 Lincolnia Road, an adjoining property owner, was opposed to the development as it

would adversely impact the value of his property. He pointed out that the street was narrow and the neighborhood was residential. He said the use would bring heavy traffic, and there was insufficient parking which would cause overflow out on to the street.

In rebuttal, Pastor Hunter stated that letters were sent prior to the mailing of required notifications and there were no negative responses. He stated that the applicant would gladly meet with Mr. Nguyen to discuss his concerns because the church cared to have good relations with the community. Pastor Hunter noted that the applicant had provided sufficient parking by exceeding the on-site requirement. He addressed the traffic impact issue by explaining the church's limited activity schedule.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2002-MA-038 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

TRUSTEES OF FIRST BAPTIST CHURCH OF FOX CHASE, SP 2002-MA-038 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 4215 Pine La. on approx. 1.78 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 63. (Moved from 10/8/02) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 2002; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has worked diligently with staff to address all issues and concerns, and warranted the approval of its special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s).3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 4215 Pine Lane (1.78 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 Apid Architects Planners PC dated September 20, 2001, as revised through September 10, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.



4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be two-hundred forty (240).
6. Parking shall be provided in the areas shown on the Special Permit Amendment Plat. All parking for the church shall be on site.
7. The design of the church shall be consistent with the architectural renderings included as Attachment 1 to the special permit conditions.
8. The transitional screening requirement shall be modified along all lot lines in favor of the existing vegetation and shall be supplemented with a mixture of deciduous, flowering and evergreen trees to visually screen the church from adjacent residential properties. The type, size and number of supplemental trees shall be as approved by the Urban Forestry Division.
9. The barrier requirement shall be waived along all lot lines.
10. Interior and peripheral parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance, as determined by DPWES, and as shown on the special permit plat. In addition, an evergreen hedge shall be provided around the periphery of the parking lot to reduce headlight glare to neighboring residential properties.
11. Foundation plantings shall be provided on all sides of the structure as shown on the special permit plat and as approved by the Urban Forestry Division, to visually soften the appearance of the structure.
12. Stormwater management/best management practices (SWM/BMP) shall be provided, as determined by the Department of Public Works and Environmental Services (DPWES). If approved by DPWES, a bioretention facility shall be provided for SWM/BMP purposes; however, notwithstanding what is shown on the special permit plat, the facility shall be located outside the transitional screening areas.
13. Tree cover shall be provided per Article 13 of the Zoning Ordinance. Final determination regarding compliance with these requirements shall be as approved by the Urban Forestry Division at the time of site plan review.
14. All signs on the property shall conform to the provisions of Article 12.
15. The limits of clearing and grading shall be no greater than shown on the special permit plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for construction, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
16. Any proposed lighting on the site shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed 12 feet and shall be full cut-off lights.

- The lights shall be of a design which focuses the light directly onto the subject property.
- Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
- The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, except for security lighting directly adjacent to the building.
- There shall be no up-lighting of the proposed building or sign.

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. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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At this time, staff acknowledged the readiness of the representative for the SIKH FOUNDATION OF VIRGINIA to address the Board and proceed with their application presentation.

Page 786 October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-S-098 Appl. under Sect(s) 3-C03 of the Zoning Ordinance to amend SP 83-D-098 previously approved for church (temple) and related facilities to permit change in land area, building addition and site modifications. Located at 7250 Ox Rd. on approx. 5.49 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 7E pt. and 7F. (def from 10/1/02 and 10/8/02 for decision only)

Ms. Susan Langdon, Chief, Special Permit and Variance Branch, distributed revised development conditions and a fence agreement to the Board members.

John Farrell, agent for the applicant, stated that staff's language generally reflected the Sikh Foundation's intentions in addressing neighbors' concerns and the Virginia Department of Transportation (VDOT) issues. He voiced concern over the 10-foot restriction for both sides of the driveway's slope. He cited tree save for the applicant's design and noted the future inter-parcel connection consideration.

In response to Ms. Gibb's question, Ms. Langdon stated that staff supported the application partially because of the substantial amount of vegetation proposed to be saved along the property line. She suggested that a retaining wall be extended or that the applicant work with VDOT to obtain the grading plan and present it for staff's information.

Mr. Farrell stated that VDOT was inflexible as far as providing certain documents and that they had no grading plan, only vertical and horizontal specifics. He affirmed that the applicant could only speculate that it might be a 24-foot clearing and grading limit.

Mr. Hart commented that a 24-foot limit was fairly severe and that he was concerned about it.

Ms. Josiah stated that staff was unaware that the limits of clearing and grading would be beyond what was existing and shown along the tree line until late the previous afternoon and that it was a concern. Supplemental plantings would be required, she said, if what Mr. Farrell stated was the case.

Noting that the issues were compounded to be more than the fence now that the driveway and trees were in question, Mr. Hart was concerned whether or not the application was advertised properly.

Ms. Langdon affirmed that the advertisement was correct as no specifics, such as yards, were required in this case.

Ms. Gibb stated her discomfort over the application as currently proposed and submitted. Concerning the plat and Development Conditions 8 and 10, Ms. Gibb commented that if no 10-foot limit was provided, then the plat should show the limits of clearing and grading. Any language describing the fence to be one of division must be deleted from the plat. Ms. Gibb favored adapting staff's language for Development Condition #8 to the fence agreement language.

Mr. Farrell voiced his opposition to further deferring the application. He clarified the area of the clearing and grading. He concurred to strike the "division fence" language concluding that the fence issue was resolved. Mr. Farrell submitted the development language to state that the '... clearing and grading would be kept to a minimum, as feasible . . . ' which should be acceptable and urged that the application proceed.

Discussion followed among the Board members with Mr. Kelley stating his discomfort with proceeding with the case and favoring a deferral for receipt of explicit language. Mr. Hart concurred with a deferral suggesting specific language be provided to the Board via facsimile regarding the limits of clearing and grading on the plat or the exact dimensions quantifying it because, in his opinion, "minimum feasible" was too vague.

Ms. Gibb moved to defer SPA 83-D-098 for one week, requesting clarification of Conditions 8 and 10 and submission of a revised plat. Mr. Kelley seconded the motion.

Chairman DiGiulian stated the plat should specifically show a proposed limit of clearing to allow staff to address the condition and a remedy if the applicant did not strictly adhere to it.

The motion carried by a 7-0 vote. The application was deferred to November 5, 2002, at 9:00 a.m.

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9:00 A.M.      ROBERT H. AND ELISE Q. CHRISCO, SP 2002-DR-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 14.5 ft. from rear lot line. Located at 2000 Va Ave. on approx. 37,868 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) (5) 1, 2 pt. and 41-1 ((1)) (5) 32A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Thomas, Fagelson, Schonberger, et al., replied that it was.

Mr. Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicants sought to allow a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure, a storage shed with a workshop, to remain 14.5 feet from the rear lot line. Mr. Bernal stated that the amount of error was 2.5 feet and that numerous applications for properties in the vicinity of the application site had been heard by the BZA prior to adoption of the current Ordinance. Mr. Bernal stated that the October 28th affidavit had only recently been approved by the County Attorney and was submitted to the Board that morning.

Mr. Thomas noted the applicant's dismay when he discovered his custom-built shed was not in compliance

due to a height issue after he had followed all County procedures throughout the permit process. Mr. Chrisco resided on his property for 38 years, and had documented support from his neighbors. Mr. Thomas stated that because the shed was constructed from the ground up, it physically could not be moved.

Chairman DiGiulian called for speakers.

Mr. Norman Hammer, representing the neighbors most affected, the Sweeneys, affirmed that his clients had no objection to the approval of the permit.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2002-DR-043 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

ROBERT H. AND ELISE Q. CHRISCO, SP 2002-DR-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 14.5 ft. from rear lot line. Located at 2000 Va Ave. on approx. 37,868 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) (5) 1, 2 pt. and 41-1 ((1)) (5) 32A. 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 29, 2002; 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 (storage shed with workshop) as shown on the plat prepared by WM. S. Sikes, Jr., Land Surveyor, dated June 28, 2002, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 2002. This date shall be deemed to be the final approval date of this special permit.

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Page ~~788~~ 789, October 29, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      GOOD SHEPHERD LUTHERAN CHURCH, SP 2002-HM-045 Appl. under Sect(s) 3-103 of the Zoning Ordinance to permit a church with a nursery school. Located on the S. side of Leesburg Pi., approx. 500 ft. E. of its intersection with Reston Ave. on approx. 7.93 ac. of land zoned R-1. Hunter Mill District. Tax Map 11-2 ((1)) 34C and 35. Continued to 11/26/02

Mr. Hart disclosed that he was involved with three cases that attorneys from the firm of the applicant's agent, Robert Lawrence, Esq., were working on. Mr. Hart did not believe this affected his ability to participate in the case.

Mr. Pammel disclosed that he was a confirmed member of the Evangelical Lutheran Church of America but believed that his association did not affect his decisions in land use cases.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate Robert Lawrence, Agent, replied that it was.

Mr. Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. Mr. Bernal stated that the applicant requested approval of a special permit for a new church, nursery school, and to construct a series of attached structures to house a sanctuary, fellowship hall, classrooms, and administrative office space. He noted that the church proposed ingress and egress improvements on Reston Avenue, and to construct an inter-parcel access to a proposed medical care facility northwest of the site. Staff had concerns regarding landscape buffers, transitional screening, an environmental quality corridor, on-site water quality and best management practices, and an adverse impact on the surrounding residential properties, but these issues were resolved, Mr. Bernal noted. It was staff's conclusion, he stated, that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and staff recommended approval.

Vice Chairman Ribble assumed the Chair.

Mr. Bernal responded to questions from Mr. Pammel and Mr. Hart concerning an approved adjacent health care facility and its extension of time, and a house's location on the plat.

Chairman DiGiulian resumed the Chair.

At Mr. Pammel's request, Mr. Lawrence clarified the meaning of the terminology 'Potential Future Facility Site'. He confirmed staff's determination of the applicant's compliance with the Comprehensive Plan. Mr. Lawrence informed the Board how the applicant diligently worked with the community addressing their concerns by modifying its plan to include: relocating the structure farther from the adjoining residential property line; substantially expanding the tree save areas; reducing the square footage of the building; and, reducing the seating capacity in the sanctuary as well as reducing the number of parking spaces. He noted that at the time of construction, an on-site meeting with the Urban Forrester was scheduled which fulfilled staff's condition for a determination of supplemental planting areas to assure adequate buffering. Mr. Lawrence requested the language be modified for Development Condition #19 and the language clarified for Development Condition #14 to allow building security lighting. To demonstrate support for the church, Mr. Lawrence had the attending members stand. He requested the Board's approval for their special permit application.

Mr. Lawrence responded to questions from Ms. Gibb, Mr. Kelley, and Mr. Hammack concerning the proposed nursery school, a detention pond, the applicant's notification mailings, a September 17th meeting with the members of the Reston Association, and the information packet and contract of Parcel 34. He noted that parcel 34's property owners consent letter authorizing the applicant to proceed was submitted for the record. In response to Mr. Hart, he clarified the applicant's road dedication and improvements.

Chairman DiGiulian called for speakers in support of the application.

Pastor Monte Frome, Good Shepherd Lutheran Church, spoke of the character and purpose of the church and its relationship with the Reston community. He noted their contributions towards social ministry programs and countless man-hours for projects of mercy. Pastor Frome stated that the church enjoyed an excellent relationship with the greater Reston community over the last 30 years.

Chairman DiGiulian called for speakers in opposition of the application.

Mr. Jim Ragan, representing Terrace Glen Homeowners Association, stated that they received no notification of the proposed development. He read the Chairman's letter which requested that all permit processes and construction approvals be suspended until detailed environmental studies were performed with the results examined by the local homeowners. The letter cited increased traffic as a danger to the neighborhood children, the destruction of green areas, and noise pollution which diminished the community's quality of life.

Mr. John Huang, President of Cedar Chase at Great Falls Owners Association, submitted that the increased traffic the project generated was dangerous, and the possibility of crime and vandalism in the secluded parking lot, as well as the decrease in property values were of grave concern. He requested the application be denied due to the severe adverse impact the facility would have on the harmony of the neighboring residential community.

Mr. Larry Butler, Director of Parks and Recreation for the Reston Association (RA), said he had no opinion for or against the project but did have comments. He stated that the facility would not be allowed use of RA's privately owned and maintained detention pond, and that a development condition stipulated that the church's stormwater management be required on-site with detention underneath its proposed parking lot. Mr. Butler said that RA requested that the BZA require the church to fully respect the limits of clearing and grading with specific emphasis on protecting understory vegetation for substantial screening and that the building be set back from the adjoining residential lots as far as possible. Mr. Butler stated that RA also requested that the BZA require the church to increase the screening plantings at the rear of the building. The Reston Association's fourth request, stated Mr. Butler, was to support the church's efforts to drain rooftops and related storm drainage to the site's front so as to limit damaging runoff on residential properties.

Ms. Darlene Mitchell, 11495 White Oak Court, Herndon, opposed the proposed development citing traffic issues.

Ms. Barbara Anderson, 11500 White Oak Court, Herndon, represented 300 other property owners, quoted language from the Comprehensive Plan regarding the Route 7 Corridor which stipulated residential development and clarified acceptable special permit uses. She pointed out the great size of the proposed facility quoting the height and expanse and questioned how a building the size of a football field 6-stories

high could be compatible with the surrounding residential community. Ms. Anderson maintained that the activity generated by the church and school was not compatible with the adjacent residential homes. She respectfully requested the BZA deny the application based on non-compliance with the Fairfax County Comprehensive Plan requirements with respect to scale, scope and intensity of use.

Ms. Roz Spoto, Round Pebble Lane, Reston, spoke as a property owner impacted by the proposal and as a professional realtor. She quoted specific standards concerning special use permits from Appendix 8 of the Staff Report. She cited the building's height as negatively impacting the neighboring residential development professing that the allotted amount of vegetative screening was clearly insufficient.

Mr. Hart requested that Mr. Lawrence address the height issue during rebuttal.

Mr. Bob Crow, 1106 Round Pebble Lane, Reston, referenced an approval for a special permit use application in which the importance of a transitional area was stressed. He believed this application's high intensity use, the facility's size and scope, were not in harmony with the Comprehensive Plan and he respectfully requested that the BZA scrutinize the proposal and prevent the quasi-commercial encroachment.

Mr. Gene Haymond, 1112 Round Pebble Lane, Reston, being a civil engineer, concurred with the negative impact issues concerning the stormwater runoff. He stated that he supported churches and, was a Christian, but he believed this was not the right place for this church.

Mr. Bob Otter, 1104 Round Pebble Lane, Reston, presented a comparison of the proposed facility with another church and a mosque. He noted the different building heights and the distances from adjoining residential property lines. He cited the access road and parking lot as potential problem areas with dangerous traffic and drug traffic or vandalism.

Ms. Rosemary Quinn, 1111 Round Pebble Lane, Reston, spoke of dangerous increased traffic, potential crime, drainage issues, and the sheer size of the proposed facility looming over her residential community.

Ms. Leah Hess, 11496 White Oak Court, Reston, gave a brief history of the traffic wrecks and congestion plagued by Reston Avenue before Reston Parkway was built. She stated that she and her neighbors were on well and septic fields and were worried about contamination due to the development as well as leaks from construction damage to the Colonial gas pipeline.

Mr. Kevin Anderson, 11500 White Oak Court, Reston, presented a litany of serious road issues on the dangerous and congested Reston Avenue. He submitted that more church uses would greatly exacerbate the situation. Parking along their neighborhood streets from overflow church activities was another concern of his and his neighbors, he stated. Mr. Anderson submitted that for this site to be developed, development conditions must be mandated for road improvements along Reston Avenue to include sidewalks and acceleration lanes, widening of the church's entranceway, and a left-turn lane into the facility. Mr. Anderson presented aerial photos depicting the scale of similar special uses pointing out how much smaller they were than the proposed site and that they were aesthetically compatible in building materials and size to the surrounding residential properties. He concluded that major road improvements contributed to orderly access and egress into these sites.

Mr. Dale Bogner, 1158 Reston Avenue, spoke about recently losing his home of 15 years to condemnation due to his water becoming contaminated by recent development. He concurred with Ms. Hess about the terrible number of automobile accidents he had seen over the years on Reston Avenue. Mr. Bogner said the application should be denied because of safety issues.

Mr. Rob Gustafson requested the application be denied based on their petition signed by 300 homeowners, and citing contradiction to the Comprehensive Plan which called for residential use; the fact that the use was not compatible with the neighboring properties; dangerous vehicular traffic would be created; the neighboring residential properties would lose their quality of life as well as property values; and Reston Avenue did not meet County definition as a 'collector street'; therefore, a nursery school should not be allowed.

Ms. Patty Otten, 1104 Round Pebble Lane, requested that, if the Good Shepherd Lutheran Church were approved, the Board would impose the same conditions applied to the Chesapeake Health Care Corporation

under SE 98-H-060 mandating a Tree Preservation Plan to include a tree inventory and a tree condition analysis report prepared by a certified tree arborist. She read specific language that should be required.

Ms. Langdon responded to Mr. Hart's question concerning the applicant's development conditions concerning tree save, plantings and a required barrier.

Ms. Christa Hassanein, 1184 Broad Creek Place, representing her 27-home community, opposed the development. She cited their children's safety because of the traffic and pointed out that there were no sidewalks.

Mr. Edward Jaccaro, 11602 Tori Glen Court, Herndon, said his community received no notification of the proposed development. He maintained that because of no significant infrastructure, there was a severe traffic problem that the proposed development would exacerbate. This would create a situation of boxing-in his community from exiting onto the crowded dangerous roadway. Mr. Jaccaro believed the facility was too large for the road network to manage and requested the application be denied.

Mr. Victor Farfong opposed the application, concurring with the issues cited by previous speakers, the huge size of the complex, water run off complications, water contamination, and security issues.

Mr. Mike Corkery, 1110 Round Pebble Lane, Reston, relocated to the area because of the rural residential harmony. He opposed the facility because of its enormous size and because the facility was not in harmony with the Route 7 Corridor development plan.

Mr. Randall Byrnes, 1108 Round Pebble Lane, Reston, reiterated that there was a plethora of serious issues concerning the development, such as traffic, landscaping, the enormous size of the facility and its inappropriateness and incompatibility. He believed the applicant had not adequately addressed citizen concerns. Mr. Byrnes submitted that staff was charged with determining whether the project met the technical standards for a special permit but the BZA was responsible to evaluate the subjective issues impacting the neighborhood.

Mr. Craig Soblasky, a member of the Shaker Woods HOA, voiced concern for children's safety due to traffic. He requested the application be denied.

In rebuttal, Mr. Lawrence affirmed that they conducted additional as well as the required notifications and would willingly meet with citizens. He stated that Reston Avenue met the Zoning Ordinance criteria for a collector's street. To address traffic concerns, Mr. Lawrence pointed out that the church's activities were considered "non-peak" thus the Department of Transportation (DOT) had no issues with the size and use. He addressed future road dedication and turn lane provisions, and explained pertinent Comprehensive Plan language regarding the special permit use. He clarified the scale and mass of the facility in relation to the surrounding properties.

Mr. Bill Robson, Robson Group Architects, Inc., the architect for the church, pointed out that the architectural drawing was not an accurate portrayal of the design and scale. He explained the correct layout.

Mr. Dennis Thomas, Burgess and Niple, the project engineer, responding to Mr. Hart's and Ms. Gibb's questions, explained the specific heights and elevations of the trees, the buildings, and advised of the preservation of vegetative material and the mature trees saved.

Mr. Lawrence explained that the vinyl fence was thought to be the least visually offensive for temporary screening and to fulfill staff's requirement would supplement the existing vegetation. He assured that the stormwater management would be contained on-site, and the church would assure there was no after-hours loitering in its parking lots. Mr. Lawrence submitted that the application met all Zoning Ordinance requirements and respectfully requested the Board's approval.

Chairman DiGiulian closed the public hearing.

Mr. Pammel thanked the speakers for their testimony and recognized that there were issues the applicant needed to address further. He explained that the staff report was professionally prepared and represented



Page 793 October 29, 2002, (Tape 1), GOOD SHEPHERD LUTHERAN CHURCH, SP 2002-HM-045, continued from Page 792

the County's policy for institutional uses. He noted that the proposed use was not a "quasi-commercial use" but an institutional use. He concurred that the intersection at Route 7 and Reston Avenue required signalization and the applicant needed to consult with VDOT for a remedy. Mr. Pammel charged Mr. Lawrence to compromise with the community to mitigate the impact on the surrounding properties by reducing the bulk and scale of the facility, and urged the citizenry to present their comprised issues through no more than two representatives. Mr. Pammel moved to continue the public hearing on SP 2002-HM-045, to November 26, 2002.

Mr. Hammack seconded the motion.

Mr. Kelley opposed the motion stating the church had a 30-year history of being a good neighbor in the community and would continue to resolve concerns. He believed reducing its bulk would not lessen opposition. Mr. Kelley believed the information submitted was well prepared and sufficient for the Board to make a well informed decision.

Mr. Hart supported the motion as clarification of several issues was warranted.

Chairman DiGiulian opposed the motion to continue the public hearing as he believed additional time would not bring a mutually acceptable resolution.

The motion carried by a vote of 4-3 with Messieurs Hart, Kelly, and Chairman DiGiulian opposed.

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Page 793 October 29, 2002, (Tape 1), Scheduled case of:

9:30 A.M. E.P. MOWING & LANDSCAPING, INC., A 2002-MV-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is allowing the operation of a contractor's office in the C-8 District without a valid Non-Residential Use Permit or Site Plan approval in violation of Zoning Ordinance provisions. Located at 8801 Richmond Hwy. on approx. 2.85 ac. of land zoned C-6, C-8, HC, HD and CRD. Mt. Vernon District. Tax Map 109-2 ((2)) 9. (Admin from 7/30/02 per appl. req.) (Def from 10/1/02)

Mr. James D. Turner, representing the applicant, E. P. Mowing & Landscaping, stated a deferral had been requested from staff due to affidavit submittals and the time involved for a prior owner's attorney to work through documentation.

Ms. Susan Epstein, Assistant to the Zoning Administrator, concurred with the applicant's requested deferral with a suggested date of December 10, 2002.

There being no speakers and no objections, Mr. Kelley moved to defer the public hearing on A 2002-MV-013, to December 10, 2002, at 9:30 a.m.

Mr. Pammel seconded the motion, which carried by a 7-0 vote.

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Page 793 October 29, 2002, (Tape 1), Scheduled case of:

9:30 A.M. EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junkyard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9100 Furnance Rd. on approx. 7.67 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 23. (Def. from 12/5/00. Moved from 3/6/01. Def. from 4/3/01. Def from 10/2/01, 12/11/01 and 3/26/02 for Decision Only)

Ms. Gibb recused herself from participating in this case as she had, at one time, represented the Harris's.

Page 794 October 29, 2002, (Tape 1), EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026, continued from Page 793

Mr. William E. Shoup, Deputy Zoning Administrator, stated that the violation had been resolved and staff recommended dismissal of the appeal.

Mr. Kelley moved to dismiss A 2000-MV-026, Edmund J. and Miriam H. Harris.

Mr. Hammack seconded the motion, which carried by a vote of 5-0 with Ms. Gibb recused and Mr. Ribble not present for the vote.

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Page 794, October 29, 2002, (Tape 1), Scheduled case of:

9:30 A.M. SANDY C. HESS, A 2002-PR-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property did not meet minimum lot area requirements of the Zoning Ordinance when created, does not meet current minimum lot size requirements of the R-1 District, was not legally subdivided and is not buildable under Zoning Ordinance provisions. Located at 8415 Rainbow Rd. on approx. 23,870 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((1)) 47.

Mr. Hart disclosed that two deeds contained in the staff report had been prepared in 1966 by the firm of which he was a partner but having no knowledge of this particular case, he believed his disclosure did not compromise his participation in this appeal.

Ms. Jayne Reale, Zoning Administration Division, presented the staff report. She explained that the appeal was of the determination that the appellant's property did not meet minimum lot area requirements of the Zoning Ordinance when created, did not meet current minimum lot size requirements of the R-1 District, was not legally subdivided, and was not buildable under Zoning Ordinance provisions.

In response to Mr. Hammack's questions, Mr. William Shoup, Deputy Zoning Administrator, explained the 60-day adopted provision that prohibited a change in position by the Zoning Administrator. He acknowledged staff's error when the permit division approved the building permit in 2000. Mr. Shoup maintained that previous errors in issuing building permits did not preclude non-issuance of future permits.

William M. Baskin Jr., representing the applicant, submitted documents regarding applicable Code language, street file notes concerning buildable lots to include the subject lot, and the July 2000, building permit issued to the Hess's for an addition. He called attention to a tax document evidencing the Hess' property having been assessed on both land and improvements because of the improvement constructed in 1966. Mr. Baskin gave a brief history of the Hess' ownership of the property. He noted that the Hesses intended to build several additions but after applying for a second permit were advised that their lot was not a buildable lot. Mr. Baskin contended that the County's 2000 determination issuing the permit evidenced that their lot was buildable and the County could not reverse its previous determination. He stated that the Hesses should be allowed to proceed with their development plans.

Ms. Reale responded to Ms. Gibb's question concerning other buildable lots on Rainbow Road.

Discussion followed among Ms. Gibb, Mr. Shoup, and Ms. Reale regarding citizen requests for staff determinations on buildable lot status, the tax assessments, and land values.

Mr. Shoup responded to Ms. Gibb's comment on the hardship the people with unbuildable lots suffered in that even a building permit would not be issued if a house had fire damage; Ms. Gibb stated how unfair the situation was for those people. Mr. Shoup said that, to seek a remedy, the Board of Supervisors' would consider a possible amendment to the Subdivision Ordinance.

Mr. Baskin submitted that it should not be the homeowners' responsibility to remedy the County's harsh and inequitable position. He requested the Board of Zoning Appeals reverse the Zoning Administrator's position.

Mr. Hart commented on another case of hardship by a homeowner on Rainbow Road.

Mr. Shoup explained circumstances for issuing a variance and the possible ensuing problems concerning density.

Chairman DiGiulian commented that the appellants had asked staff's opinion whether their lot was buildable and were advised that it was; that this was a case where a citizen should have the right to rely on County officials advice.

Mr. Shoup concurred that the situation was both unfortunate and unfair but the Zoning Administrator could not regulate on what was fair or not fair. He submitted that only an Ordinance change could offer a remedy.

Discussion followed among the Board members and Mr. Shoup regarding several unusual circumstances of development and buildable lots.

Chairman DiGiulian called for speakers.

Mr. Robert Hess, the appellant, presented a brief synopsis of the purchase and later improvements to his property. He relayed several conversations he had with County personnel concerning his permit submissions. He explained the time-restrictions with his construction loan and the real possibility of losing everything. He mentioned that his wife was in poor health suffering with cancer. Mr. Hess stated that their living situation was very difficult because of the house's condition, that he had relied on the County's advice and now found himself trapped in terrible circumstances. He stated that the whole situation was a fiasco.

Mr. Eric Warrant, the owner of Lot 46, explained his frustration that his lot, assessed at \$115,000, after being vandalized, could not be repaired nor improved because it was determined an unbuildable lot. He hoped the Board could offer the Hesses a remedy with their situation.

Ms. Reale concurred that the situation was most unfortunate but pointed out that the lot never met Zoning Ordinance requirements. She stated that there was no authority under Zoning Ordinance provisions to issue further building permits.

Mr. Baskin responded to Ms. Gibb's question concerning a lot line adjustment and Mr. Hammack's inquiry regarding a grading plan.

Ms. Gibb disclosed that Mr. Warrant was a client of her law partner but that she was unaware of that fact until this moment. She stated that fact had no relevance to her participating with the proceedings.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to reverse the Zoning Administrator's for Appeal Application A 2002-PR-028.

Ms. Gibb seconded the motion.

Mr. Hart commented that with this particular case there was action that building permit was issued, and it was implicit with the issuance of that permit, that the determination was that the lot was buildable; after 60 days, the County could not go back on its previous determination, he stated.

Mr. Kelley submitted that with the approval of the motion, that the Hess' lot was considered a buildable lot forever.

Mr. Shoup concurred.

Ms. Gibb again requested that there be an Ordinance change to solve the on-going question and problems concerning buildable legal lots under the Subdivision Ordinance.

The motion carried by a 6-0 vote. Mr. Ribble was not present for the vote.

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Page 796, October 29, 2002, (Tape 1), After Agenda Item:

Approval of October 22, 2002 Resolutions

Mr. Hammack moved to approve the October 22, 2002 Resolutions. Mr. Kelley seconded the motion, which carried by a vote of 5-0-1, with Mr. Pammel abstaining and Mr. Ribble not present for the vote.

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With the approval of the other Board members, Mr. Hammack submitted a draft of the BZA Proposed By-law changes to staff.

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As there was no other business to come before the Board, the meeting was adjourned at 1:42 p.m.

Minutes by: Paula A. McFarland

Approved on: October 14, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John DiGiulian, Chairman  
Board of Zoning Appeals