

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 5, 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

~ ~ ~ November 5, 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 and 10/29/02 for decision only)

Vice Chairman Ribble noted that the application had been deferred for decision only. He said new conditions and a new plat had been distributed to the BZA members.

Ms. Gibb moved to approve SPA 83-S-098 for the reasons noted in the Resolution.

Mr. Hart said he would support the motion. He said the property was located in the RC District and typically the BZA would like to see 50% undisturbed open space. Mr. Hart said this particular application was significantly less than that; however, there was an existing use that had been heavily impacted by road widening and the loss of the existing septic field. Mr. Hart said under these unique circumstances it was justified to depart from the guideline.

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## COUNTY OF FAIRFAX, VIRGINIA

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

TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-S-098 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 83-S-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 and 10/29/02 for decision only) 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 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 worked with the neighbors and the Virginia Department of Transportation to develop a plan and conditions with the least impact on the neighbors.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(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, 7250 Ox Road, (5.49 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William H. Gordon Associates, Inc., dated May 13, 2002, as revised through November 1, 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 seating capacity shall be one-hundred and fifty (150).
6. There may be a maximum of two (2) employees living at the facility.
7. Parking shall be provided, as shown on the special permit amendment plat. All parking for the use shall be on site. There shall be no parking on the drainfield, along the drive aisle or in any area outside of the specified parking areas.
8. The transitional screening requirements shall be modified in favor of the existing vegetation along the southern lot line except in the area of the septic drainfield. Additional planting shall be provided along the southern property line in the area of the septic drainfield, as is feasible and determined by the Urban Forester, in order to screen the use from adjacent residential properties.

A fence measuring six (6) feet in height (board on board or board and batten with no gaps) shall be installed along the southern property line and shall be field-located in consultation with the Urban Forestry Division during site plan review. The fence shall be located on the applicant's property one (1) foot or more from the property line and shall meander as necessary to avoid damage or destruction of trees six (6) inches in diameter or greater, as approved by the Urban Forester. The fence shall be constructed and maintained in good repair by the applicant. All costs related to fence construction and maintenance shall be the responsibility of the applicant. The subject fence shall connect to the fence proposed to be installed by VDOT around the septic drainfield in the western portion of the lot. Any proposal to remove or relocate the fence subsequent to installation shall require a special permit amendment.

9. Parking lot landscaping shall be provided in accordance with Article 13.
10. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), an interparcel access connection to Lot 1A shall be constructed within the existing ingress/egress easement as shown on the special permit amendment plat and as determined by DPWES. An ingress/egress easement shall be recorded in the land records of Fairfax County permitting access to and from Lot 1A.
11. The limits of clearing and grading for the entrance drive/interparcel access road shall be the minimum amount feasible and shall be no greater than shown on the special permit plat. A single row of evergreen trees shall be planted along the southern portion of the entrance drive/interparcel access road and shall extend from the right of way to its intersection with the parking lot.
12. The applicant shall scarify and revegetate the area occupied by the existing gravel drive prior to the issuance of a Non-Residential Use Permit (Non-RUP). Since the gravel drive area will be subject to a stormwater easement, it shall be planted with ornamental grasses and similar plants, chosen by

~ ~ ~ November 5, 2002, TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-S-098, continued from Page 2

the applicant in consultation with the Urban Forestry Division of the Department of Public Works and Environmental Services (DPWES). If the area is disturbed for access to the stormwater facilities within the easement, it shall be replanted within 30 days of the completion of the work.

13. 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.
14. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
15. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), the applicant shall regrade the existing stormwater management facility and construct the parking as outlined in Condition 7. The existing off-site regional stormwater management/Best Management Practices (SWM/BMP) facility provided by VDOT shall satisfy the SWM/BMP requirements for the site, as shown on the Special Permit Amendment Plat and included in the agreement for a deed in lieu of condemnation.
16. 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 the existing building or signage.
17. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), the septic system and associated drainfield shall be constructed as shown on the special permit amendment plat, in consultation with the Department of Health and 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, eighteen (18) 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.

~ ~ ~ November 5, 2002, TRUSTEES OF SIKH FOUNDATION OF VIRGINIA, SPA 83-S-098, continued from Page 3

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 13, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      PATRICK AND ROBYN O'DONNELL, VC 2002-SP-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.3 ft. from rear lot line and 9.5 ft. from side lot line such that side yards total 16.3 ft. Located at 9121 Silver Pointe Way on approx. 5,614 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((14)) (A) 50.

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. Robyn and Patrick O'Donnell, 9121 Silver Pointe Way, Fairfax Station, 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 11.3 feet from the rear lot line and 9.5 feet from the side lot line such that side yards total 16.3 feet. A minimum rear yard of 25 feet and a total side yard of 20 feet are required; therefore, variances of 13.7 feet and 3.7 feet were requested respectively.

Mr. Hart asked if there was a minimum lot size for the PDH-2 District. Ms. Josiah replied no, but it was most similar to the RC Cluster.

Ms. O'Donnell presented the variance request as outlined in the statement of justification submitted with the application. She said there was no other feasible location for the addition. Ms. O'Donnell stated that the addition backed to a treed common area and on the side lot line there was a row of trees. She said the homeowners association had approved the addition and there was no opposition from the neighbors.

Vice Chairman Ribble called for speakers.

Jean Hassan came forward to speak in opposition. She expressed concerns with the addition blocking the sun, lack of privacy and her property value being decreased. Ms. Hassan said the addition would cause a change in character of the neighborhood. She said the trees on the side of the property were not as tall as the house.

Ms. Gibb asked for photographs of the property and the applicant submitted them.

Ms. O'Donnell stated in her rebuttal that the trees would remain and would camouflage the addition. She said the addition would increase property values. Ms. O'Donnell stated that the addition could not be seen from the street.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2002-SP-132 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK AND ROBYN O'DONNELL, VC 2002-SP-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.3 ft. from rear lot line and 9.5 ft. from side lot line such that side yards total 16.3 ft. Located at 9121 Silver Pointe Way on approx. 5,614 sq. ft. of land zoned PDH-2. Springfield

~ ~ ~ November 5, 2002, PATRICK AND ROBYN O'DONNELL, VC 2002-SP-132, continued from Page 4

District. Tax Map 97-4 ((14)) (A) 50. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 with the required standards.
3. The lot is narrow and small which causes constraints with expanding the existing facilities.
4. The variance would not change the character of the zoning district.
5. The Crosspointe Homeowners Association has approved the request.
6. The property abuts open space to the rear.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Dewberry & Davis, LLC, dated July 27, 1993, as revised through July 19, 2002, submitted with this application and is not transferable to other land.

~ ~ ~ November 5, 2002, PATRICK AND ROBYN O'DONNELL, VC 2002-SP-132, continued from Page 5

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. Pammel and Mr. Hart voted against the motion. 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 13, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. LINDA K. SCHLAITZER AND JANICE M. TYREE, TRUSTEES FOR THE BERNADINE R. MELVIN TRUST, VC 2002-MA-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 3 lots with proposed Lots 2 and 3 having lot widths of 0.0 ft. Located at 4921 Sunset La. on approx. 2.88 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 2.

Vice Chairman Ribble indicated that VC 2002-MA-124 had been administratively moved to December 10, 2002.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD EUBANKS, VC 2002-LE-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. and eave 4.5 ft. from side lot line and 26.2 ft. and eave 25.3 ft. from front lot line. Located at 8121 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 15.

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 Eubanks, 8121 Martha Street, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of an addition 5.6 feet and eave 4.5 feet from the side lot line and 26.2 feet and eave 25.3 feet from the front lot line. A minimum side yard of 15 feet and a minimum front yard of 35 feet are required and eaves are permitted to extend 3 feet into a yard; therefore, variances of 9.4, 7.5 feet, 8.8 and 6.7 feet were requested respectively.

Mr. Eubanks presented the variance request as outlined in the statement of justification submitted with the application. He said the house was built in 1978 and any addition would require variance approval. Mr. Eubanks stated that the addition would not change the footprint of the house. He said the neighbors were in support of the application.

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

Mr. Pammel moved to approve VC 2002-LE-125 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

RICHARD EUBANKS, VC 2002-LE-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. and eave 4.5 ft. from side lot line and 26.2 ft. and eave 25.3 ft. from front lot line. Located at 8121 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 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 November 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 presented testimony indicating compliance with the required standards for a variance.
3. The lot configuration is unusual for the zoning district because it is narrow, small, and 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:

~ ~ ~ November 5, 2002, RICHARD EUBANKS, VC 2002-LE-125, continued from Page 7

1. This variance is approved for the location of the addition and eave shown on the plat prepared by Alexandria Surveys International, LLC, dated July 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 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 13, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JASON D. AND JEWELL C. HUDSON, VC 2002-SP-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from rear lot line. Located at 9114 Silver Pointe Way on approx. 6,758 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((14)) (A) 32.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jason and Jewell Hudson, 9114 Silver Pointe Way, Fairfax Station, 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 16.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 9.0 feet was requested.

Ms. Hudson presented the variance request as outlined in the statement of justification submitted with the application. She said the request was to replace the existing deck with an addition. Ms. Hudson stated that the addition backed to common area and there was a row of Leland Cypress trees on the side of the addition.

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

Mr. Hart moved to approve VC 2002-SP-126 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JASON D. AND JEWELL C. HUDSON, VC 2002-SP-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from rear lot line. Located at 9114 Silver Pointe Way on approx. 6,758 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((14)) (A) 32. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:



~ ~ ~ November 5, 2002, JASON D. AND JEWELL C. HUDSON, VC 2002-SP-126, continued from Page 8

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 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 showing compliance with the required standards for a variance.
3. There are a number of features that distinguish this application from the similar application on the same street.
4. The lot is larger than the similar application, although the lots are small for single family homes.
5. The lot is irregularly shaped with an arc measuring 56.5 feet across the front and the house is over 40 feet from the street causing almost no back yard.
6. As opposed to the earlier application, the addition is more central to the lot and no side yard variance is needed.
7. The photographs reflect a heavily wooded area with mature trees immediately behind the lot.
8. The addition is smaller than the existing deck and it has been designed in a way to minimize the encroachment into minimum rear yard.
9. There will be no significant impact on the neighbors because of the placement of the addition.
10. The variance request is at a minimum necessary to accomplish a modest addition to the house.

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

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

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

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

~ ~ ~ November 5, 2002, JASON D. AND JEWELL C. HUDSON, VC 2002-SP-126, continued from Page 9

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 Dewberry & Davis, LLC, dated September 24, 1993, 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.

Mr. Pammel and 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 13, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M.        DAVID L. RILEY, VC 2002-MV-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure 4.0 ft. from side and rear lot lines. Located at 8029 Lynnfield Dr. on approx. 10,857 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 2.

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. David and Linda Riley, 8029 Lynnfield Drive, 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 an accessory structure (a detached garage) to be located 4.0 feet from a side lot line and 4.0 feet from the rear lot line. A minimum side yard of 12 feet and a minimum rear yard of 14.2 feet were required; therefore, variances of 8.0 feet for the side yard and 10.2 feet for the rear yard were requested.

Ms. Riley presented the variance request as outlined in the statement of justification submitted with the application. She said the request was for a 2-car detached garage. Ms. Riley stated that the requested location was the most attractive place for the garage. She said there was no other feasible location.

Ms. Gibb asked if the existing carport and driveway would remain. Ms. Riley replied yes.

Mr. Hammack stated that the garage was fairly large and asked if it could be scaled down. Ms. Riley stated that they had more than 3 cars and they also wanted to use part of the garage as a workshop.

Ms. Riley stated that the house on the adjacent property was 56 feet from the property line. She submitted a letter from the owner of Lot 3 indicating their support of the application.

Ms. Gibb said she was concerned about the amount of concrete on the property. Ms. Riley stated that there was an error on the plat and that the concrete was narrower towards the house.

Ms. Gibb moved to approve VC 2002-MV-128 for the reasons noted in the Resolution.

Mr. Pammel said he would not support the motion. He said the structure would be over 600 square feet. Mr. Pammel said the structure was large and would be imposing and he would prefer something smaller.

Mr. Hammack stated that he agreed with Mr. Pammel. He said the variance was for convenience and the structure was very large. Mr. Hammack said he could not support the motion.

Mr. Hart said this was a close case, but he was concerned about the size of the pavement. He said he agreed with Mr. Pammel and Mr. Hammack. Mr. Hart said that if the addition was slightly narrower, it would be less of an impact.

The motion failed by a vote of 3-3. Mr. Hart, Mr. Hammack, and Mr. Pammel voted against the motion. Chairman DiGiulian was absent from the meeting.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

DAVID L. RILEY, VC 2002-MV-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure 4.0 ft. from side and rear lot lines. Located at 8029 Lynnfield Dr. on approx. 10,857 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 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 November 5, 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 oddly shaped.
3. The proposed location is the best place for the garage and it will have less impact on the neighbors.
4. The applicant presented testimony indicating that there is screening from the property in the rear.
5. The photographs reflect that the impact will not be severe.

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

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

~ ~ ~ November 5, 2002, DAVID L. RILEY, VC 2002-MV-128, continued from Page 11

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

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

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

1. This variance is approved for the location of a detached garage shown on the plat prepared by Bryant L. Robinson, dated August 2, 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. Notwithstanding what is shown on the plat, the accessory storage structure (shed) shall be re-located to comply with the minimum yard requirements for accessory storage structures as set forth in 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. Kelley seconded the motion, which **FAILED\*** by a vote of 3-3. Mr. Hart, Mr. Hammack, and Mr. Pammel voted against the motion. Mr. Hart moved to waive the 1-year 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.

\*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 November 13, 2002. This date shall be deemed to be the final decision date of this variance.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      ROBERTA M. HANKS, VC 2002-BR-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line and accessory structure to remain 6.0 ft. from rear lot line. Located at 8333 The Midway on approx. 23,969 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-1 ((3)) 67.

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. Roberta Hanks, 8333 The Midway, Annandale, Virginia, replied that it was.

~ ~ ~ November 5, 2002, ROBERTA M. HANKS, VC 2002-BR-133, continued from Page 12

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 9.4 feet from a side lot line and an accessory structure (a storage shed) to be located 6.0 feet from the rear lot line. A minimum side yard of 15 feet and a minimum rear yard of 9.2 feet are required; therefore, variances of 5.6 feet for the garage addition and 3.2 feet for the shed were requested respectively.

Ms. Hanks presented the variance request as outlined in the statement of justification submitted with the application. She said she purchased the home in 1998 and planned to retire in it. Ms. Hanks stated that she needed single floor living space and that was the reason for the addition. She said the addition would replace the existing carport. Ms. Hanks said the lot was wooded in the rear.

Mr. Hammack asked Ms. Hanks if she could shift the proposed 4-car garage behind the existing dwelling. Ms. Hanks replied that a septic tank was in that location.

Mr. Hart asked if the shed was attached to a foundation. Ms. Hanks replied no. Mr. Hart asked if the shed could be shifted to the center of the lot. Ms. Hanks replied that she did not know.

Mr. Hart indicated that the addition was larger than the house.

Vice Chairman Ribble called for speakers.

Hunter Clark, 8329 The Midway; JoAnn Buto, 4226 Holborn Avenue; and Neil Seiden 4224 Holborn Avenue, came forward to speak in opposition. They expressed concerns relating to jeopardizing the enjoyment of their property; a decrease in property value; the size of the structure being as large as houses in the neighborhood; the structures being out of character with the neighborhood; the possibility of flooding; and the shed not being aesthetically pleasing.

Ms. Hanks stated in her rebuttal that she understood the concerns of the neighbors. She said she did not intend to do anything that would lower her property value or the value of the neighbors' property. Ms. Hanks said she had the most modest home in the neighborhood and there were differences of availability of space. She said it was a large addition but it was not intended to be a 4-car garage.

Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve-in-part VC 2002-BR-133 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERTA M. HANKS, VC 2002-BR-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line and accessory structure to remain 6.0 ft. from rear lot line. **(THE ADDITION WAS DENIED)** Located at 8333 The Midway on approx. 23,969 sq. ft. of land zoned R-2, Braddock District. Tax Map 70-1 ((3)) 67. 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 5, 2002; and

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

1. The applicant is the owner of the land.
2. The addition has too much bulk and mass.
3. The testimony indicated that the addition would be 48 feet long and would be like a barrier.

~ ~ ~ November 5, 2002, ROBERTA M. HANKS, VC 2002-BR-133, continued from Page 13

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 (Shed) as shown on the plat prepared by R.C. Fields, Jr., dated April 4, 2001, as revised through August 7, 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.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley moved to waive the 1-year 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 13, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MANUEL M. CIENFUEGOS, SP 2002-MV-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 5.8 ft. from side lot line. Located at 7816

~ ~ ~ November 5, 2002, MANUEL M. CIENFUEGOS, SP 2002-MV-044, continued from Page 14

Schelhorn Rd. on approx. 33,362 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (7) 15.

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. Manuel Cienfuegos, 7816 Schelhorn Road, Alexandria, 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 an accessory structure to remain 5.8 feet from a side lot line. A minimum side yard of 15.0 feet is required; therefore, a modification of 9.2 feet was requested.

Mr. Cienfuegos presented the request as outlined in the statement of justification submitted with the application. He said he purchased the house in June 2000, and moved his handicapped mother into the house. Mr. Cienfuegos said his mother had trouble walking up steps, so he built a shed to accommodate his mother. He said he did not realize he was in violation. Mr. Cienfuegos stated that he purchased the shed through a company; he asked at that time whether he needed a permit to build the shed and he was told that he did not need one. He said the shed was needed for storage.

Mr. Hammack asked who constructed the shed. Mr. Cienfuegos said he constructed the shed, but purchased a kit from a company. He said the County Inspectors came to inspect the shed and found it to be in compliance with regard to construction.

Mr. Ribble asked where the complaint originated. Rebecca Goodyear, Zoning Inspector, stated that effective July 1, 2002, they were no longer allowed to reveal the complainant.

Mr. Hammack asked if the shed was removable. Mr. Cienfuegos replied yes.

Mr. Hammack asked if the shed could be moved closer to the house. Mr. Cienfuegos replied that there was an air conditioner between the house and the shed.

Mr. Hart asked if the shed could be moved over. Mr. Cienfuegos replied that he was trying not to impact the neighbors. He submitted a letter in support of the application.

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

Mr. Pammel moved to deny SP 2002-MV-044 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MANUEL M. CIENFUEGOS, SP 2002-MV-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 5.8 ft. from side lot line. Located at 7816 Schelhorn Rd. on approx. 33,362 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (7) 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 November 5, 2002; and

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

1. The applicant is the owner of the land.

~ ~ ~ November 5, 2002, MANUEL M. CIENFUEGOS, SP 2002-MV-044, continued from Page 15

2. The applicant has not met the prescribed criteria for a special permit.
3. If a variance had been filed and submitted to the BZA, the BZA would have found that there were numerous other locations on the site where a shed could be located without the requirement for a variance.
4. The request is for convenience and the applicant can move the shed to a location that meets the requirements of the 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). 8-914 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 5-1. Mr. Hammack voted against the motion, 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 13, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ISAIAS MEJIA, SP 2002-LE-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 9.5 ft. from side lot line. Located at 7209 Monticello Blvd. on approx. 8,400 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 80-3 ((3)) (72) 9.

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. Anna Mejia, the applicant's daughter, 7209 Monticello Boulevard, Springfield, 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 room addition (from an enclosed carport) to remain 9.5 feet from a side lot line. A minimum side yard of 12.0 feet is required; therefore, a modification of 2.3 feet was requested.

Ms. Mejia presented the request as outlined in the statement of justification submitted with the application. She said they enlarged and expanded the carport to use for storage. Ms. Mejia said the house was small.

Mr. Hammack how much of the carport was enclosed when the house was purchased. Ms. Mejia replied that the back of the carport was enclosed when they purchased the house.

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

Mr. Pammel moved to approve SP 2002-LE-048 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ISAIAS MEJIA, SP 2002-LE-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 9.5 ft. from side lot line. Located at 7209 Monticello Blvd. on approx. 8,400 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 80-3 ((3)) (72) 9. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:



~ ~ ~ November 5, 2002, ISAIAS MEJIA, SP 2002-LE-048, continued from Page 16

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 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 Charles E. Janson, Land Surveyor, dated July 22, 1999, as revised August 3, 1999, 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. 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 13, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 5, 2002, (Tape 1), Scheduled case of:

9:30 A.M. MARVIN D. AND JEAN P. TOOMBS, A 2002-MA-022 and A 2002-MA-023 Appls. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing tenants to operate a Vehicle Major Service Establishment and a Truck Rental Establishment in the C-8 District without special exception approval and without valid Non-Residential Use Permits in violation of Zoning Ordinance provisions. Located at 5710 Center La. on approx. 23,352 sq. ft. of land zoned C-8, CRD, HC and SC. Mason District. Tax Map 61-2 ((20)) 16. (Concurrent with A 2002-MA-024). (Admin moved from 10/22/02 per appl. req)

9:30 A.M. MARVIN D. AND JEAN P. TOOMBS, A 2002-MA-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a tenant to operate a Vehicle Major Service Establishment in the C-8 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 5710 Center La. on approx. 19,039 sq. ft. of land zoned C-8, CRD, HC and SC. Mason District. Tax Map 61-2 ((20)) 17A. (Concurrent with A 2002-MA-022 and A 2002-MA-023). (Admin moved from 10/22/02 per appl. req)

Vice Chairman Ribble noted that an Intent to Defer had been approved on October 22, 2002. Mr. Hammack moved to defer the appeals to January 14, 2003 at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 5, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
St. Raymond Catholic Church, SP 00-S-011

Mr. Kelley moved to approve the request for Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date is December 27, 2003.

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~ ~ ~ November 5, 2002, (Tape 1), After Agenda Item:

Revisions to the Board of Zoning Appeals By-laws  
(Deferred from 10/8/02, 10/15/02 and 10/22/02)

Mr. Kelley moved to indefinitely defer the revision to the BZA bylaws. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ November 5, 2002, (Tape 1), After Agenda Item:

Approval of October 29, 2002 Resolutions

Mr. Pammel 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 10:55 a.m.

Minutes by: Regina Thorn Corbett

Approved on: April 8, 2003

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

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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, November 12, 2002. The following Board Members were present: 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.

~ ~ ~ November 12, 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)

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.

Mr. Hart made a disclosure that he stated would not affect his participation in the hearing.

Tracy Swagler, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to allow two existing buildings to remain 11.5 feet and 10.8 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, variances of 8.5 feet and 9.2 feet were requested. Ms. Swagler explained that the applicant had also requested a special exception for a plant nursery.

Mr. Pammel asked what the result was from the Planning Commission hearing. Ms. Swagler said the Planning Commission had deferred decision on the application until November 20, 2002, and the Board of Supervisors would hear the case on December 9, 2002.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that the property was long and narrow and was located on the north side of Route 7 on Reston Parkway. She explained that a traffic light currently existed at the entrance of the plant nursery to Route 7. She informed the Board that the applicant had operated a plant nursery on the property since its purchase in 1979 and it was the applicant's belief that a plant nursery had operated on the property for at least five years prior to her purchase. She said a Non Residential Use Permit (Non-RUP) had been issued to the owner upon purchasing the property in 1979 and all of the improvements made over the years were done in an effort to improve the appearance of the plant nursery. Ms. Strobel explained that the applicant had filed a special exception to bring the property into compliance with the requirements that plant/nurseries were to receive approval of a special exception in the R-1 district and the variance was filed concurrently for two existing buildings on the property.

Chairman DiGiulian called for speakers.

Robert Morrow, 1055 North Falls Court, came forward to speak. He explained that the citizens were in opposition to certain aspects of the proposal but not the buildings. He stated several concerns that the citizens had with regard to screening and boundary issues.

Ms. Strobel, in her rebuttal, stated that the concerns that were identified were not relative to the variance request.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to defer decision regarding VC 2002-DR-057 to January 21, 2003, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb was absent from the meeting, and Mr. Hammack was not present for the vote.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. RODGER G. ASHLEY, VC 2002-BR-096 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. (Admin moved from 9/10/02 per appl. req)

This case was administratively moved to January 14, 2003, per the applicant's request.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. ZUBAIR RANJBER, VC 2002-BR-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard. Located at 4405 Shirley Gate Rd. on approx. 43,289 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 56-4 ((6)) 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. Zubair Ranjber, 4405 Shirley Gate Road, Fairfax, 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 allow a fence with a maximum height of 5.5 feet to remain in the front yard. The Zoning Ordinance requires a maximum fence height of 4.0 feet in the front yard; therefore, a variance of 1.5 feet was requested.

Mr. Ranjber presented the variance request as outlined in the statement of justification submitted with the application. He explained that the fence was needed to provide safety for his family from vehicular traffic on Shirley Gate Road. He informed the Board that there were several homes in the area with fences greater than 4.0 feet in height.

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

Mr. Hart moved to approve VC 2002-BR-127 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ZUBAIR RANJBER, VC 2002-BR-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard. Located at 4405 Shirley Gate Rd. on approx. 43,289 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 56-4 ((6)) 4. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 neighborhood has changed significantly in the last few years.
4. The road has been improved and widened and it is very busy with a fast speed limit.
5. The proliferation of large fences in the neighborhood indicates that they will become a standard in the future.

~ ~ ~ November 12, 2002, ZUBAIR RANJBER, VC 2002-BR-127, continued from Page 20

6. The photographs of the fence indicate that there will be no significant impact on the neighborhood.
7. The variance request is minimal and 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 fence as shown on the plat prepared by Hamid M. Tehrani, dated March 1, 2002, as revised through June 17, 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 5-0. Ms. Gibb was absent from the meeting, and Mr. Hammack was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. ELLEN H. SMITH, TRUSTEE, VC 2002-SU-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 3418 Valewood Dr. on approx. 24,320 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 103.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ellen Smith, 3418 Valewood Drive, Oakton, 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 one-story addition to be located 5.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet; therefore, a variance of 10.0 feet was requested.

Ms. Smith presented the variance request as outlined in the statement of justification submitted with the application. She explained that the addition was needed to provide additional living space. She said the addition would be in harmony with the neighborhood. She requested a waiver of the 8-day waiting period.

Mr. Hart asked the applicant for clarification that the height of the addition was 20 feet. She explained that the addition was one-story with an attic space.

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

Mr. Ribble moved to approve VC 2002-SU-131 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELLEN H. SMITH, TRUSTEE, VC 2002-SU-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 3418 Valewood Dr. on approx. 24,320 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 103. 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 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 lot is exceptionally narrow.
4. The siting of the house on the lot restricts the construction of the addition in any other area than what was proposed.
5. The proposed addition will be over 90 feet away from the adjacent dwelling.
6. Only one 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;

~ ~ ~ November 12, 2002, ELLEN H. SMITH, TRUSTEE, VC 2002-SU-131, continued from Page 22

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Scartz, dated August 2, 1993, as revised by Robert K. Smith through August 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 5-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was absent from the meeting, and Mr. Hammack was not present for the votes.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 12, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 12, 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. (Cont'd 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. Sean Lord, 46018 Grammercy Terrace, Sterling, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit amendment application as contained in the staff report. Staff submitted a memorandum with information pertaining to the concerns that were raised at the September 10, 2002, hearing.

Mr. Hart asked for testimony from Bruce Miller, Senior Zoning Inspector, regarding the results of his inspection of St. Katherine's. Mr. Miller informed the Board that the church was in violation of the current special permit conditions with regard to off-site parking.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the proposal for the childcare facility and the church were two separate uses and the childcare center would be parking on the site during the week and not during church services.

There was discussion between the Board, staff, the applicant and Chuck Dunlap, engineer, regarding confusion as to whether or not a new plat was needed. It was discussed that staff had informed Mr. Lord of the need for a new plat but that information was not forwarded to Mr. Dunlap.

Mr. Hart stated that among the information submitted by the citizens there was a photograph of a new brass plat on the playground and asked the applicant to address the confusion around the number of years that the playground had existed and if recent upgrades had been performed on the equipment.

Mr. Lord referred to James Nickolakus, representative for St. Katherine's Greek Orthodox Church.

Mr. Nickolakus explained that the playground was originally established with the church approximately 30 years ago and was not nearly as large as it was currently. He said originally there were two swing sets and a slide and approximately 7 years ago all of the equipment was replaced and a fence was installed. Mr. Nickolakus explained that the church would move the existing playground to the area suggested by staff with the agreement that the County would relocate newly planted trees in order to make space for the playground. He said the church was willing to post no parking signs on Glen Carlin Road and to install a fence around the dumpster area and to install one way signs leaving the parking lot onto Glen Carlin Road. He said the church was also willing to add additional screening along the creek to reduce the visibility of the playground and to form an oversight committee consisting of neighbors and church representatives to ensure that the conditions were not violated by the applicants.

Mr. Lord stated that he and Mr. Nickolakus had tried to address all of the issues that the citizens had mentioned. He explained that he conducted a traffic survey on September 25, 2002, between the hours of 6:30 a.m. to 8:30 a.m. and a total of 69 vehicles came from Glen Carlin Road, which averaged to be 23 cars per hour. He informed the Board that his wife performed a noise study based on children in another childcare center and determined a reading of .8 decibels which was similar to a the level of a radio playing in a home. He stated that there would be one additional trash pickup in addition to the two that currently existed. Mr. Lord pointed out that the proposed childcare center would be in full compliance with the parking regulations. He suggested that the Board implement a development condition which mandated that parents enter the center to drop off children as opposed to parking on Glen Carlin Road. He illustrated the preferred route into the parking lot for dropping off and picking up children.

Chairman DiGiulian called for speakers.

Christian P. Demeter, 2368 Greenwich Street, came forward to speak in support. He stated that there was a need for quality daycare in the area and requested that the Board approve the application.



~ ~ ~ November 12, 2002, RAINBOW ACADEMY LLC AND ST. KATHERINE'S GREEK ORTHODOX CHURCH, TRUSTEES, SPA 93-M-119, continued from Page 24

The following citizens came forward to speak in opposition:

Theresa Wilson, (no address given for the record); Phil Conrad, Hardwick Place; Marguerite Aston-Hoage, (no address given for record); Amy Conrad, Hardwick Place; William Sumansky, (no address given for the record), Darlene Shields, Hardwick Place; Sandy Samanski, Hardwick Place; Bruce Griswald, Hardwick Place; Cord Zabel, Munson Court; Leslie Mitchell, Arlington County; Michael Alterry, Glen Carlin Road; Name unclear, Munsen Court; Sandra Connelly, Munson Hills Road; Richard Looney, Munsen Hills Road; Carolyn Davis, Magnolia Avenue and Mary Nugent, Hardwick Place.

The following were the concerns stated by the citizens:

There were 3 large churches within ½ mile radius of their neighborhoods and the daycare center would add to the heavy traffic currently in the area and would increase cut through traffic into the surrounding residential areas; the citizens wanted the Board to mandate the church to address the current parking violations before approving the application; their fire hydrant was not easily accessible and there was no handicap access to the proposed entrance of the daycare facility; the impact of the daycare facility would decrease the resale value of the homes in the area; the citizens disagreed with the applicants' noise study because the noise of children playing on the playground for 5 continuous hours per day would be more than .8 decibels; at a previous hearing, a representative from St. Katherine's Church spoke against a similar daycare application citing the possibility for increased traffic in the area; the citizens believed that there was no building permit issued for the construction of the playground; and, some citizens were lead to believe that the playground would be relocated to a different area of the property before the daycare facility opened for business.

Mr. Lord, in his rebuttal, reiterated that the traffic issues could be mitigated with the implementation of no parking signs and a definitive drop off and pick up agreement with parents. He stated that the location of the property where staff suggested the playground be moved to was not sufficient.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to deny SPA 93-M-119 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

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. (Cont'd from 9/10/02) 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 November 12, 2002; and

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

1. The applicants are the owners of the land.
2. There are several problems with the application that cannot be solved to the satisfaction of the Board.
3. The issues surrounding the playground were unclear.
4. The applicant's testimony regarding why the trash pickup would not be on a daily basis was not satisfactory.
5. The applicant's testimony regarding access to the location on the site designated for the drop off of students was not satisfactory.

~ ~ ~ November 12, 2002, RAINBOW ACADEMY LLC AND ST. KATHERINE'S GREEK ORTHODOX CHURCH, TRUSTEES, SPA 93-M-119, continued from Page 25

6. The neighbors' complaints regarding traffic concerns were justified.
7. The proposed application would further commercialize and adversely affect the residential character of the neighborhood.
8. The proposed application would implement a 4-way intersection at an intersection that was already very heavily traveled.

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). 3-303 of the Zoning Ordinance.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 2002.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. EDWARD R. MCCAULEY, VC 2002-DR-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot B having a lot width of 80.0 ft. Located at 6638 Byrns Pl. on approx. 25,086 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 30-4 ((11)) 6. (Admin moved from 9/24/02 and 10/29/02 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. Charlie Shumate, Virginia, replied that it was.

Mr. Shumate, agent for applicant, explained that the applicant requested the subdivision of one lot into two lots. He provided the Board with a history of the property. He said the trend of development in the area was compatible with the proposal.

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

Mr. Pammel stated that he disagreed with the County's determination of the density of the lots.

Mr. Pammel moved to approve VC 2002-DR-102 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD R. MCCAULEY, VC 2002-DR-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot B having a lot width of 80.0 ft. Located at 6638 Byrns Pl. on approx. 25,086 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 30-4 ((11)) 6. (Admin moved from 9/24/02 and 10/29/02 per appl req) 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

~ ~ ~ November 12, 2002, EDWARD R. MCCAULEY, VC 2002-DR-102, continued from Page 26

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 6 as shown on the plat prepared by Rinker-Detwiler & Associates, P.C. dated April 23, 2002, as revised through September 16, 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 existing house on Lot A may remain or be replaced. However, the existing shed shall be removed from the property or relocated out of the front yard prior to approval of an overlot grading plan.
3. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements and a tree preservation plan shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and

~ ~ ~ November 12, 2002, EDWARD R. MCCAULEY, VC 2002-DR-102, continued from Page 27

grading of construction shall be the minimum amount feasible as determined by DPWES in consultation with the Urban Forestry Division. The tree preservation plan shall preserve as much of the existing tree canopy as possible as determined by the Urban Forester and shall meet the tree cover requirements of the Zoning Ordinance. 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. 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. 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.

4. A vegetative screen shall be planted along the frontage of Old Dominion Drive of Lot B. The type, material, number and height of the vegetation shall be as approved by the Urban Forestry Division to screen both headlight glare and traffic noise from the private areas of the rear and side yards of the site.
5. 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.
6. Access to Lot B shall be from Holmes Place. No access shall be provided from Old Dominion Drive.
7. 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 windows constitute more than 20% of any façade exposed to noise levels of DNL 65 dBA or above. If windows constitute 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.

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

Mr. Hammack seconded the motion, which carried by a 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 November 20, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M.      PATRICIO AND NANCY VILLALOBOS, SP 2002-MV-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.69 ft. and bay window 9.2 ft. from side lot line. Located at 8721 Lagrange St. on approx. 12,953 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 200A.

~ ~ ~ November 12, 2002, PATRICIO AND NANCY VILLALOBOS, SP 2002-MV-046, continued from Page 28

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Victor Amole, 1934 Winslow Court, Woodbridge, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the special permit request as contained in the staff report. The applicant requested approval of a special permit for a reduction to the minimum yard requirements based on an error in building location to permit the enclosure of a carport to remain 10.69 feet and a bay window to remain 9.2 feet from the southeast side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, modifications of 1.31 feet and 2.8 feet were requested.

Mr. Amole, agent for the applicants, presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the contractor failed to obtain a building permit before constructing the structure. He said the neighbors were not in opposition to the structure and requested that the Board approve the application.

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

Mr. Pammel moved to approve SP 2002-MV-046 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

PATRICIO AND NANCY VILLALOBOS, SP 2002-MV-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.69 ft. and bay window 9.2 ft. from side lot line. Located at 8721 Lagrange St. on approx. 12,953 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 200A. 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 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

~ ~ ~ November 12, 2002, PATRICIO AND NANCY VILLALOBOS, SP 2002-MV-046, continued from Page 29

- 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 enclosed carport addition and bay window shown on the plat prepared by Vitech Engineering, dated July 9, 2002, as revised through August 13, 2002, 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 5-0. Ms. Gibb was absent from the meeting, and Mr. Hammack was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF FLORIS UNITED METHODIST CHURCH, SPA 88-C-057-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 previously approved for a church with child care center and nursery school to permit reduction in land area. Located at 2730 Centreville Rd. on approx. 5.3 ac. of land zoned R-1 and SC. Hunter Mill District. Tax Map 25-1 ((1)) 36 and 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. Benjamin Leigh, 101 North King Street, Leesburg, 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 applicants requested approval of an amendment previously approved for a church with a childcare center and a nursery school to permit a reduction in land area, specifically, the deletion of Parcel 36. The total land area for the church upon approval of the special permit would be 4.22 acres. The site has been the subject of special permits granted by the Board since 1998. The applicants requested the same conditions as previously approved with the deletion of all conditions that pertained to Lot 36. Staff recommended approval of the application and agreed with the applicant's proposed change to Development Condition 14 to delete the requirement of new lights in the parking lot.

Mr. Leigh, agent for the applicant, presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained that the business relationship between the owner of Parcel 26 and the Church had ended and the amendment would remove all reference to Parcel 36 from the application. He requested that the Board amend Development Condition 14 to delete the requirement of new lighting in the parking lot.

~ ~ ~ November 12, 2002, TRUSTEES OF FLORIS UNITED METHODIST CHURCH, SPA 88-C-057-3, continued from Page 30

Chairman DiGiulian called for speakers.

John T. Wells, no address given for the record, came forward to speak. He requested that the Board approve the application.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 88-C-057-3 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

TRUSTEES OF FLORIS UNITED METHODIST CHURCH, SPA 88-C-057-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 previously approved for a church with child care center and nursery school to permit reduction in land area. Located at 2730 Centreville Rd. on approx. 5.3 ac. of land zoned R-1 and SC. Hunter Mill District. Tax Map 25-1 ((1)) 36 and 37. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 a special permit.
3. The special permit is to delete one parcel and is a minimal request.
4. Approval of the special permit will not implement any negative impacts on the neighborhood.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, 2730 Centreville Road (4.22 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 Walter L. Phillips Incorporated dated June 5, 2002, as revised through August 5, 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

~ ~ ~ November 12, 2002, TRUSTEES OF FLORIS UNITED METHODIST CHURCH, SPA 88-C-057-3,  
continued from Page 31

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 of the sanctuary shall be limited to 270 seats.
6. Upon issuance of a Non-Residential Use Permit (Non-RUP), the maximum daily enrollment for the child care center and nursery school shall be 99.
7. Upon issuance of a Non-RUP, the hours of operation for the child care center and nursery school shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.
8. Upon issuance of a Non-RUP, a maximum of twenty-four (24) children at any one time shall use the outdoor play area.
9. The maximum number of parking spaces shall be 135 in the location shown on the special permit amendment plat. All parking shall be on site.
10. There shall be no church parking on Maverick Lane or in the driveway to the dumpster.
11. Transitional screening and barrier requirements shall be modified in favor of that shown on the Special Permit Amendment Plat.
12. Stormwater management shall be provided in order to meet the requirements of the Chesapeake Bay Preservation Ordinance, as approved by the Director, DPWES.
13. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Ordinance. All required plantings within the parking lot and within the transitional screening buffers, as shown on the special permit plat, shall be maintained in good health. All dead vegetation within these areas, either natural or supplemented plantings, shall be replaced with like kind plantings.
14. There shall be no illumination of that portion of the parking lot located along the western property boundary (that portion of the parking lot as approved to be added in conjunction with application SPA 88-C-057). All lighting on the site shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall be a low-intensity design which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
15. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

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

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



~ ~ ~ November 12, 2002, TRUSTEES OF FLORIS UNITED METHODIST CHURCH, SPA 88-C-057-3, continued from Page 32

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 November 20, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. JOHN MARCUCCI & DIANA GIAMMARCO, VC 2002-MV-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 2500 Ryegate La. on approx. 10,959 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((2)) (19) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Marcucci, 2500 Ryegate Lane, Alexandria, Virginia, replied that it was.

Juan Bernal, 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 two-car garage addition to be located 8.8 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 3.2 feet was requested.

Mr. Marcucci presented the variance request as outlined in the statement of justification submitted with the application. He explained that the position of the house on the property restricted the construction of the garage in any other area on the lot. He said he had neighborhood support.

Chairman DiGiulian called for speakers.

Roman Rosinko, 2502 Ryegate Lane, came forward to speak. He said he was not opposed to the addition but he was concerned about the appearance of the garage. He requested that the Board require that the garage would be aesthetically pleasing and that a sufficient drainage system also be included with the construction.

Mr. Marcucci, in his rebuttal, explained that he would direct any runoff towards the back of his home to ensure that there were no drainage problems. He said he would install landscaping and decorative aesthetics to address his neighbor's concerns.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2002-MV-129 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN MARCUCCI & DIANA GIAMMARCO, VC 2002-MV-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 2500 Ryegate La. on approx. 10,959 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((2)) (19) 28. 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 12, 2002; and

~ ~ ~ November 12, 2002, JOHN MARCUCCI & DIANA GIAMMARCO, VC 2002-MV-129, continued from Page 33

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.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Brian W. Smith, dated August 31, 2002, as revised through September 25, 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

~ ~ ~ November 12, 2002, JOHN MARCUCCI & DIANA GIAMMARCO, VC 2002-MV-129, continued from Page 34

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 November 20, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. KEVIN P. AND KRISTEN A. MCCARTHY, VC 2002-DR-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 23.4 ft. from front lot line and fence greater than 4.0 ft. in height in front yard of a through lot. Located at 6913 Bonheim Ct. on approx. 10,501 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((52)) 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. Lynne Strobel, 2200 Clarendon Boulevard, Alexandria, Virginia, replied that it was.

Mr. Hart made a disclosure that he stated would not prevent his participation in the hearing.

Juan Bernal, Staff Coordinator, presented the request as contained in the staff report. The applicants requested variances to permit a fence greater than 4.0 feet in height to remain in a front yard of a through lot and to permit the construction of a deck to be located 23.4 feet from the front lot line of a through lot. The Zoning Ordinance requires a minimum front yard of 30.0 feet; therefore, a variance of 6.6 feet was requested for the deck and a variance of 2.0 feet was requested for the fence.

Ms. Strobel, agent for the applicants, presented the variance request as outlined in the statement of justification submitted with the application. She explained that the property had double front yard requirements and needed a variance to construct the deck in what the applicant's considered their back yard. She said the fence was needed to provide security and privacy for their property.

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

Mr. Kelley moved to approve VC 2002-DR-130 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN P. AND KRISTEN A. MCCARTHY, VC 2002-DR-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 23.4 ft. from front lot line and fence greater than 4.0 ft. in height in front yard of a through lot. Located at 6913 Bonheim Ct. on approx. 10,501 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((52)) 10. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 2002; and

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

~ ~ ~ November 12, 2002, KEVIN P. AND KRISTEN A. MCCARTHY, VC 2002-DR-130, continued from Page 35

1. The applicants are the owners of the land.
2. The applicants' testimony and letter of justification indicated compliance with the required standards for the granting of a variance.
3. The property has double front yard requirements.

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

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

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

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

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

1. This variance is approved for the location of the deck and fence shown on the plat prepared by Paul B. Johnson, dated May 31, 2002, as signed September 30, 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.

~ ~ ~ November 12, 2002, KEVIN P. AND KRISTEN A. MCCARTHY, VC 2002-DR-130, continued from Page 36

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 November 20, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 12, 2002, (Tape 1) Scheduled case of:

9:00 A.M. DOUGLAS L. AND ANN K.D. WALLS, VC 2002-PR-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.4 ft. from rear lot line. Located at 2152 Silentree Dr. on approx. 11,825 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 39-3 ((42)) 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. Douglas Walls, 2152 Silentree Drive, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the request as contained in the staff report. The applicants requested a variance to permit construction of an addition to be located 8.4 feet from a rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 16.6 feet was requested.

Mr. Walls, agent for applicants, presented the variance request as outlined in the statement of justification submitted with the application. He explained that the addition was to expand their family room to provide them with additional living space. He said the home was placed toward the rear of the property and at an angle to such a degree that a variance was needed to construct the addition.

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

Mr. Hammack moved to approve VC 2002-PR-144 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS L. AND ANN K.D. WALLS, VC 2002-PR-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.4 ft. from rear lot line. Located at 2152 Silentree Dr. on approx. 11,825 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 39-3 ((42)) 43. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 house is sited at an angle on the property which reduces the effective rear yard within the set back line for any addition other than what was requested.
4. The property backs to Park Authority property.
5. The proposed variance will not impact on any neighbor or change the character of the neighborhood.

~ ~ ~ November 12, 2002, DOUGLAS L. AND ANN K.D. WALLS, VC 2002-PR-144, continued from Page 37

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Randy A. Stowers, dated, July 10, 2002, as revised through September 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 (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Ms. Gibb was absent from the meeting, and Mr. Kelley was not present for the vote.

~ ~ ~ November 12, 2002, DOUGLAS L. AND ANN K.D. WALLS, VC 2002-PR-144, continued from Page 38

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 12, 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, 9/10/02 and 10/15/02)

William E. Shoup, Deputy Zoning Administrator, presented staff's position as contained in the staff report. He said the subject of the appeal was a December 15, 2001, Notice of Violation which cited violations of proffers as well as other Zoning Ordinance violations. He said there was a proffer appeal heard by the Board of Supervisors on May 6, 2002, and the Board upheld the portion of the violation Notice that dealt with proffers. The appellant had appealed that decision to the Circuit Court and further litigation was pending.

Mr. Shoup stated that the issues before the Board of Zoning Appeals were whether the operation of a bus rental company on the property constituted the establishment of a heavy equipment and specialized vehicle sales rental and service establishment, whether the nature and extent of the storage on the property constituted a junkyard and was in violation of the I-5 District regulations and whether the uses that were established on the property, including the structures that were built, existed on the property without a valid site plan building permits and Non-Rup approval. He explained that the violations continued although there had been some clean up of the property and the issue in the appeal was what was taking place at the time of the Notice of Violation. He submitted aerial photographs depicting the condition of the property at the time the Notice of Violation was issued. He contended that the nature of the bus company operation met the criteria of the definition of heavy equipment specialized vehicle sale rental and service establishment and that storage on the property met the criteria of a junkyard definition and constituted the establishment of a junkyard on the property. He explained that a junkyard was not permitted in the I-5 District; therefore, the use was in violation of the Zoning Ordinance. Mr. Shoup said there was a structure on the property that was used as offices, a large shed and a barn structure that was constructed on the property during the early 1990's. He informed the Board that there had been no site plan approval for the establishment of the uses and no Non-Rup approval for the uses; therefore, the property was in violation of the Zoning Ordinance.

MacCauley Arnold, McCandlish & Lillard, agent for appellant, explained that the appellants had a roofing business on the property which had existed for a number of years. He submitted photographs depicting the current status of the property and stated that there was no junkyard use on the property. He contended that staff had not presented adequate evidence to indicate that the property was used as a junkyard. He said there were passenger buses kept on the property which were allowed in the I-5 Zoning District. He said the main use on the property was a contractor's office for the roofing business and there was an ancillary secondary use on the property for the bus rental business. He contended that the violation for outdoor storage had not been adequately established. Mr. MacCauley indicated that the appellants did not have an approved site plan and they had made several attempts to come into compliance in that regard, but they were not currently in full compliance. He said the appellants needed time to obtain approval of a proffered condition amendment from the Board of Supervisors in order to proceed any further with site plan approval. He requested that the BZA give the appellants time to achieve site plan approval and to reverse the Notices of Violation regarding the junkyard use and parking of passenger buses on the property. He submitted a proposed development plan for the property to the BZA.

Jimmie Walker, appellant, informed the Board that he had removed most of the material that had accumulated on the property over the years, towed away several old vehicles, planted trees along the front of the lot and installed an 8.0 foot wooden fence along the south side of the lot. He said he was trying to do everything possible to bring the property into compliance.

~ ~ ~ November 12, 2002, JIMMIE AND MARGIE WALKER, A 2002-LE-001, continued from Page 39

Mr. Hart asked what progress the appellants had made to resolve the eight deficiencies in the site plan application. Mr. MacCauley explained that there were communication difficulties between the County and the appellant's old engineer which caused a 60-day delay in the site plan process. He said the appellant had a new engineer and they were working toward submitting a new site plan application.

Mr. Hart asked if the appellant disputed the facts that the bus rental company was being advertised on the property and that there was no Non-Rup approval on the property. Mr. MacCauley stated that the appellants did not dispute those facts.

There was conversation between the Board, staff and the appellants as to how long the barn structure had existed on the property and whether or not it pre-dated the Zoning Ordinance.

Mr. Hart asked staff what the hardship would be to defer the appeal until the appellants obtained site plan approval and cleared all of the violations. Mr. Shoup replied that the proffered condition amendment process and the site plan review process could take of nine or more months and there was no guarantee that the proffered condition amendment would be approved by the Board of Supervisors. He reminded the BZA that the Notice of Violation had been issued one year ago and the property was located on Cinderbed Road and the County had been trying to clear many violations in that area. He stated that it would be unfavorable to defer the appeal for nine months without any knowledge of the final conclusion. He suggested that the Board uphold the Notice of Violation and the County would file enforcement litigation in the form of a consent decree and a time-frame for the appellants could be negotiated at that point to allow them to follow through with site plan approval.

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

Mr. Hart stated that the property was operating within the definition of a junkyard although there had been positive progress on the property. He encouraged continued work toward a resolution of the property. He said the bus activity was a violation and a site plan was required and a Non-RUP was required. He stated that he believed the appellant's testimony that the barn preexisted the Zoning Ordinance; therefore, the barn was not a violation.

Mr. Hart moved to uphold to the determinations at issue in the appeal with the exception of the issue of the barn structure and to reverse the determination that the barn like structure needed building permit approval.

Mr. Pammel stated that the barn was expanded during the years and the appellants' had not applied for a building permit; therefore, the barn was in violation.

Mr. Kelley seconded the motion, which carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted against the motion, and Ms. Gibb was absent from the meeting.

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~ ~ ~ November 12, 2002, (Tape 1) After Agenda Item:

Request for Additional Time  
Victor S. Mahal  
VC 99-Y-192

Mr. Ribble moved to approve the request for additional time for Victor S. Mahal, VC 99-Y-192. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date is September 15, 2003.

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~ ~ ~ November 12, 2002, (Tape 1) After Agenda Item:

Approval of November 5, 2002 Resolutions

Mr. Pammel 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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~ ~ ~ November 12, 2002, (Tape 1) After Agenda Item:

Request for Reconsideration  
Roberta Hanks  
VC 2002-BR-133

There was no motion; therefore, the Request for Reconsideration was denied.

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~ ~ ~ November 12, 2002, (Tape 1) After Agenda Item:

Request for Reconsideration  
David and Linda Riley  
VC 2002-MV-128

There was no motion; therefore, the Request for Reconsideration was denied.

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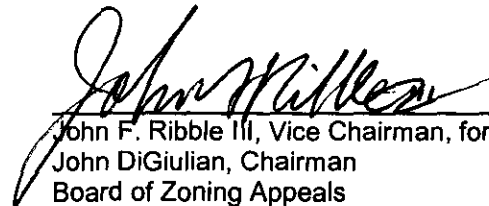
As there was no other business to come before the Board, the meeting was adjourned at 12:56 p.m.

Minutes by: Lori M. Mallam

Approved on: August 5, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 19, 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 9:01 A.M. Chairman DiGiulian reviewed 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.

~ ~ ~ November 19, 2002, (Tape 1) Scheduled case of:

9:00 A.M. KEVIN NORRIS, VC 2002-HM-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 2.3 ft. and 8.8 ft. from side lot lines. Located at 2434 Dakota Lakes Dr. on approx. 8,558 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((16)) 76.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Kevin Norris, 2434 Dakota Lakes Drive, Oak Hill, Virginia, replied it was.

Ms. Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She explained that the applicant sought a variance to permit construction of a brick patio 2.3 feet from one side lot line and an eight-foot deck 8.8 feet from the other side lot line. Variances of 2.7 feet and 0.8 feet respectively were requested. Ms. Stanfield noted that a revised Statement of Justification to include the brick patio was distributed that morning.

Mr. Norris presented the variance request as outlined in the statement of justification submitted with the application. He explained that the patio could only be placed at the rear of his house due to how his home was positioned on the lot and the fact that his lot was wedge-shaped. In response to Mr. Hammack's question, he stated the patio would be flush to the ground, and that there was ample vegetative buffer.

Mr. Hammack asked staff to explain why the patio required a variance.

Ms. Susan Langdon, Chief, Special Permit and Variance Branch, said a recent interpretation from the Zoning Administration Division had clarified the Zoning Ordinance definition of a deck to include a patio. She stated that a deck must meet yard requirements which at times required a variance.

In response to Mr. Hart's question, Mr. Norris explained that there was an existing patio currently under the deck which allowed sufficient room to stand.

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

Mr. Hammack moved to approve the variance application for the reasons set forth in the Resolution.

Mr. Hammack further moved that staff provide the Board with a copy of the Interpretation regarding patios/decks.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN NORRIS, VC 2002-HM-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 2.3 ft. and 8.8 ft. from side lot lines. Located at 2434 Dakota Lakes Dr. on approx. 8,558 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((16)) 76. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ November 19, 2002, KEVIN NORRIS, VC 2002-HM-134, continued from Page 43

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 2002; and

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

1. The applicant is the owner of the land.
2. The deck requires a minimal variance and satisfies the requirements for a variance.
3. The property has converging lot lines.
4. The patio, although interpreted as a deck, does not impact adjoining property owners.
5. The additions do 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 patio deck and shown on the plat prepared by Daniel L. Wachob, dated March 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

~ ~ ~ November 19, 2002, KEVIN NORRIS, VC 2002-HM-134, continued from Page 44

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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. Messieurs Pammel and 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 November 27, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 19, 2002, (Tape 1) Scheduled case of:

9:00 A.M. EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 24.23 ft. Located on the W. side of Westmoreland St., approx. 400 ft. S. of its intersection with 33rd St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A.

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. Eggert Nielson, the applicants' son, 8704 Park Street, Vienna, Virginia, replied that it was.

Ms. Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought to permit a minimum lot width of 24.23, where a minimum of 70.0 feet was required by Sect. 3-406 of the Zoning Ordinance, for the purpose of creating one single-family detached residential building on the lot.

Ms. Stanfield responded to Mr. Hart's question concerning development conditions related to shared driveways and easements.

Eggert Nielson gave a brief history of his parents' ownership of and plans for their property. He pointed out that a development of shared maintenance agreement with the neighbors was in progress.

Chairman DiGiulian called for speakers.

Ms. Adrienne White, representing the McLean Citizens Association (MCA), supported the application, noting that all MCA's previous objections were addressed; in particular, the Nielson's agreement to donate a conservation easement. Ms. White stated that there was no longer concern over the execution of the maintenance agreement for the ingress/egress as it was a condition of MCA's support.

Ms. Deborah Shull, the adjoining neighbor, requested that the driveway maintenance agreement be finalized before the Board made its decision to assure neighborly coexistence.

Responding to Mr. Hart's question, Mr. Nielson and Ms. Shull concurred that within two weeks they would reach an agreement finalizing the easement.

Chairman DiGiulian closed the public hearing.

Mr. Hart commented that a lender for a construction loan may require finalization of the driveway easement. He stated that a two-week deferral facilitated both parties in finalizing the issues. Mr. Hart moved to defer the decision on VC 2002-DR-139, Einer R. & Stefania S. Nielson, to December 3, 2002, at 9:00 a.m. Mr. Hammack seconded the motion.

Ms. Gibb and Mr. Kelley voiced their disagreement with deferring the decision. They believed that allowing an applicant time to finalize a maintenance agreement should not be the Board's purview.

Chairman DiGiulian concurred with their opinion.

~ ~ ~ November 19, 2002, EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139, continued from Page 45

Mr. Hart submitted that a development condition would satisfy the shared maintenance agreement issue, but that he believed the applicants should determine the conditions of the agreement.

Discussion followed among Board members concerning the driveway.

Mr. Hart stated that the case's merit was not an issue; his concern was the appropriate language for a development condition. He requested that staff suggest language.

Ms. Langdon said staff had not prepared language but would review typical language for the Board's consideration.

Mr. Hart withdrew his motion to defer the decision. He then moved to approve VC 2002-DR-139 for the reasons set forth in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a minimum lot width of 24.23 ft. Located on the W. side of Westmoreland St., approx. 400 ft. S. of its intersection with 33rd St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. 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 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 have presented testimony showing compliance with the required standards for a variance.
3. The parcel is an odd shape that poses significant constraints to development.
4. The required hardship criterion for a variance is particularly met as no improvement is possible without a variance.
5. The property has limited access by being inaccessible from Locust Street, and therefore mandates extension of the existing pipestem 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.

~ ~ ~ November 19, 2002, EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139, continued from Page 46

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 minimum lot width of 24.23 feet, as shown on the plat prepared by Kayvan Jaboori, dated June 18, 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 limits of clearing and grading shall be no greater than shown on the variance plat. The limits of clearing and grading shall be the minimum amount feasible to provide for the development as depicted and shall preserve the maximum amount of desirable vegetation possible, as determined by the Urban Forestry Division of DPWES.
3. The applicant shall install supplemental plantings, species, size and number as determined in consultation with the Urban Forestry Division, DPWES, along the eastern lot line of the property to serve as a visual screen between the subject property and the adjacent properties. In addition, every effort will be made to preserve trees located along the pipestem driveway, as determined feasible by the Urban Forestry Division. Replacement trees shall be provided on a one to one ratio for trees removed during construction. Size and species of the replacement trees shall be determined in consultation with the Urban Forestry Division.
4. A conservation easement shall be recorded among the land records of Fairfax County over the western portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area outside the limits of clearing and grading, as shown on the variance plat. The easement shall specify that 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. Prospective purchasers of the subject property shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Every deed of conveyance for Lot 44A shall expressly contain these disclosures.
5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 44A and 44B over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of Lots 44A and 44B and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

Pursuant 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

~ ~ ~ November 19, 2002, EINER R. & STEFANIA S. NIELSON, VC 2002-DR-139, continued from Page 47

the variance. The request must specify 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. Pammel abstained from the vote.

\*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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~ ~ ~ November 19, 2002, (Tape 1) Scheduled case of:

9:00 A.M. PAUL F. URRUTIA, VC 2002-MV-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from side lot line. Located at 7747 Frances Dr. on approx. 35,037 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (5) 503.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Urrutia, 7747 Frances Drive, Alexandria, Virginia, replied that it was.

Ms. Jennifer Josiah, Senior Staff Coordinator, presented the staff report. She stated the applicant sought a variance of 4.1 feet to permit construction of a garage addition 10.9 feet from the northwest side lot line. She noted that the adjacent residence to the northwest on Lot 504 was located 2.3 feet from the shared lot line.

Mr. Urrutia stated that the area for the garage was too narrow to house a car. In response to Mr. Hammack's question as to why the garage would be 34 feet long, he explained that he wanted to move his heating and hot water heater, which were currently in a utility closet in the house, out to the garage.

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

Mr. Ribble moved to approve VC 2002-MV-137 for the reasons set forth in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL F. URRUTIA, VC 2002-MV-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from side lot line. Located at 7747 Frances Dr. on approx. 35,037 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((7)) (5) 503. 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 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 has met the standards for the required variance.
3. The lot is exceptionally narrow.
4. The placement of the house on the lot severely constrains any development improvements.

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



~ ~ ~ November 19, 2002, PAUL F. URRUTIA, VC 2002-MV-137, continued from Page 48

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 August 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. Kelley seconded the motion, which carried by a vote of 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 19, 2002, (Tape 1) Scheduled case of:

9:00 A.M. MR. AND MRS. ROHRBACH, VC 2002-DR-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 904 Douglass Dr. on approx. 24,515 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) 30C.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Rohrbach, 904 Douglass Drive, McLean, Virginia, replied that it was.

Ms. Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a 15.0-foot variance to permit construction of a garage addition 5.0 feet from the side lot line. She stated that the adjacent residence to the south on lot 24A was located 51.8 feet from the shared lot line.

Mr. Rohrbach stated that his variance had the support of his neighbors and that the garage would be in harmony with his house. He responded to Ms. Gibb's question concerning his existing garage and its proposed use for storage. He clarified that the trees and hollies currently screening his property, would remain and that he had done some supplemental plantings as well.

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

Ms. Gibb moved to approve VC 2002-DR-135 for the reasons set forth in the Resolution.

Mr. Pammel stated he could not support the motion as sufficient hardship was not proved and the variance appeared to be one of convenience.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MR. AND MRS. ROHRBACH, VC 2002-DR-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 904 Douglass Dr. on approx. 24,515 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) 30C. 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 19, 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 very narrow and the house was placed, with difficulty, within the building envelope.
3. The next door neighbor's property is well screened by ample, mature vegetation and trees, and the house is located more than 50 feet from the shared property 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;

~ ~ ~ November 19, 2002, MR. AND MRS. ROHRBACH, VC 2002-DR-135, continued from Page 50

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Hayes Architects, dated June 19, 2002, as revised through August 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. Kelley seconded the motion, which carried by a vote of 5-1. Mr. Pammel voted against the motion, 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 November 27, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 19, 2002, (Tape 1) Scheduled case of:

9:00 A.M.      ANDREW AND LAURIE BUCHANAN, VC 2002-DR-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.2 ft. from side lot line and deck to remain 2.7 ft. from other side lot line. Located at 6608 Melrose Dr. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22)) (B) 34 and 35.

~ ~ ~ November 19, 2002, ANDREW AND LAURIE BUCHANAN, VC 2002-DR-136, continued from Page 51

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Laurie Buchanan, 6608 Melrose Drive, McLean, Virginia, replied that it was.

Mr. Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He explained that the applicant sought two variances, a 10.8-foot variance to permit construction of a garage addition to be located 4.2 feet from a side lot line, and a 7.3-foot variance to permit an existing deck to remain 2.7 feet from the other side lot line. He stated that the adjacent residence on Lot 33 was located approximately 156.4 feet from the shared side lot line.

Mrs. Laurie Buchanan explained that the variance was necessary to construct an additional bedroom, expand their kitchen, and upgrade an existing detached storage shed in to a functional garage. She stated that their neighbors supported the variance and submitted their letters for the record.

Mr. Andrew Buchanan responded to Mr. Hammack's question explaining that a 30-foot long garage was requested in order to have additional storage space as well as to construct a children's playroom.

Laurie Buchanan clarified that the garage's footprint remained the same but the rear would be expanded to add storage space and the side expanded to add the playroom. She responded to Mr. Pammel's questions regarding the addition of the bedroom and bathroom. She confirmed that they never would rent out the new addition, that it would accommodate only their family.

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

Mr. Kelley moved to approve VC 2002-DR-136 for the reasons set forth in the Resolution.

Mr. Pammel commented that in most cases he supported no less than a 5-foot minimum yard, but this case was unusual and certain factors had altered his opinion. He noted that the Buchanans' home was built in the 1920s and had been brought up to current building standards.

Mr. Hammack stated that the design was well-done, but the 4.2-foot variance for the addition, in his opinion, impacted the adjoining property owner. He believed it was a convenience for the Buchanans; and therefore, he could not support the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW AND LAURIE BUCHANAN, VC 2002-DR-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.2 ft. from side lot line and deck to remain 2.7 ft. from other side lot line. Located at 6608 Melrose Dr. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((22)) (B) 34 and 35. 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 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 have met the required standards for a variance.
3. As the house and pool addition were in place prior to the Buchanan's purchase of the property, it was difficult to bring the property up to contemporary standards, but the applicants have proposed an excellent design given the parcel's development constraints.

~ ~ ~ November 19, 2002, ANDREW AND LAURIE BUCHANAN, VC 2002-DR-136, continued from Page 52

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

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

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

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

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

1. This variance is approved for the addition and deck as shown on the plat prepared by William G. Hawes, dated July 10, 2002, as revised through August 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 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.

Ms. Gibb 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 November 27, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 19, 2002, (Tape 1 & 2), 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 proposed Lot 2 having a lot width of 20.02 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, 9/24/02 and 10/15/02 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. John McBride, the applicant's agent, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was proposing to subdivide one lot into two lots, with Lot 17A having a lot width of 20.02 feet. The minimum lot width required by the Zoning Ordinance for the R-3 District is 80 feet. Lot 17A was proposed to contain 16,961 square feet while Lot 17B was proposed to contain 16,831 square feet in area, which resulted in a density of 2.58 dwelling units per acre. Access to the lots was proposed through a single driveway off Virginia Lane; therefore, a variance of 59.98 feet for proposed Lot 17A was requested. It was staff's opinion, he stated, that absent a variance, the applicant had failed to demonstrate that all reasonable use of the property would be prohibited, therefore, staff recommended denial.

Mr. Bernal noted that Revised Development Conditions had been distributed which corrected the decibel levels that had been transposed in error.

Ms. Gibb asked whether staff did research on every variance application to determine the legality of lots.

Mr. Bernal replied that the issue was raised because of some research that was done regarding the lot area. He said there was an indicator on the tax map that there was something wrong with the lot, and the Zoning Administrator was asked to look into it.

Ms. Gibb asked if the indicator on the tax map was a dotted line. Mr. Bernal replied affirmatively and said there was a small circle with the lot number.

Ms. Gibb asked if lot legality was checked only if there was something that flagged the attention. Mr. Bernal replied typically, yes.

Mr. Hart noted that there was discussion in the written staff report about how no building permit could be issued until there was a determination that the property was legally subdivided. He said that his understanding was that the absence of proper subdivision approval could be cured by a later approval of some reconfiguration, like another subdivision. Mr. Hart asked if it would be correct that the applicant still couldn't get building permits for either lot if the variance were approved. Mr. Bernal said he would defer to John Foster, County Attorney's Office, to speak to Mr. Hart's question.

Mr. Foster asked Mr. Hart if his question was could permits be issued for the two proposed lots if the subdivision was granted. Mr. Hart replied affirmatively.

Mr. Foster said the Department of Public Works and Environmental Services (DPWES) was in the best position to address the question. Legally, he said, he thought the application request for subdivision was premature. Mr. Foster suggested that what the applicant should do, under the Subdivision Ordinance and under the Zoning Ordinance, was to first go to DPWES to seek approval of the proposed subdivision and then go to the Board for the variance. Mr. Foster said the reason for that was because under the applicable Virginia Code provisions, a variance was defined under the application of a Zoning Ordinance, as a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land. He explained that the only lot that was in existence currently was Lot 17; therefore, the proposed variance would go to lots that were not yet in existence.

Mr. Hart asked whether there was a building permit issued for Lot 16A subsequent to 1936. Mr. Bernal replied that he hadn't looked into Lot 16A and couldn't answer that. Mr. Hart said he understood that Lot 16A was a strip of the parent lot for this application, half of what used to be 16, plus a part of what used to be 17. He said that knowing whether building permits were issued for 16A subsequent to 1936 would be helpful in understanding if we were being consistent.

~ ~ ~ November 19, 2002, JAMES L. HICKERSON, VC 2002-PR-075, continued from Page 54

Mr. Hart asked if a copy of the 1977 minutes reflecting the approval of the subdivision on the adjacent Lot 18 was available. Mr. Bernal said he could get a copy, but he remembered that lot as being subdivided into three lots and then subsequently being approved for two lots.

Mr. Hart said he would like to see the minutes and the discussion contained therein for Lot 18.

Ms. Gibb asked what the applicant would ask for from DPWES. Mr. Foster replied that they would ask for approval of subdivision of existing Lot 17.

Ms. Gibb stated that she believed just addressing Lot 17 would not be enough, that DPWES would say that all the owners and lenders in the entire area would have to join in.

Mr. Foster stated that under the Virginia Code, there were very specific standards that must be met for the approval of a variance, and whether or not DPWES was in a position to grant the threshold subdivision application did not fall into any of the nine standards that must be satisfied before a variance could be granted.

Ms. Gibb stated that if the BZA could not grant a variance for a lot that was not legal, every variance application that was made should be researched to determine whether the lot was legal. She said the Board might have granted variances for illegal lots that weren't flagged because there was no little circle on the map, but if a title search was done, you would find that in 1932 a metes and bounds description was made, which she said did not seem fair.

Ms. Langdon said that was certainly a possibility. She explained that it would take a lot of research, going back and getting a lot of information to do those on each and every lot that came before the Board. She said some lots were indicated on the tax map and were flagged, and that brought it to staff's attention. Ms. Langdon said there were other lots that were part of the original subdivision in this case that probably were illegally subdivided, whether there were building permits, would have to be looked into, but some of those had dwellings on them.

Ms. Gibb stated that a curative Ordinance was what was needed to handle the issue fairly.

Mr. Pammel asked what the date was of the initial Subdivision Code for the County. Ms. Langdon said 1929.

Mr. Hart said being able to see whatever the applicable Subdivision Ordinance provision was in 1936 would be helpful.

Mr. McBride introduced Lori Greenlief, a planner on the project, and Mr. Quiroga, the agent for Mr. Hickerson.

Mr. McBride said that regarding the illegal lot issue and the 1936 Ordinance, what was not met was the recordation of a plat. He explained that the 1936 Ordinance did not have standards like the current Ordinances had. He said it was a review by the County Surveyor, his approval, and then recordation of a plat. Mr. McBride stated that this case was identical by year and situation to the Shiroma appeal, and he read excerpts from a June 17<sup>th</sup> memo written by Bill Shoup regarding that case.

Mr. McBride presented a tax map and on it pointed out the adjoining PDH-3 subdivision and stated that it showed how the proposed subdivision of the Hickerson property fit into the existing development pattern of the neighborhood. He pointed out a dark diagonal line reflecting the 200-foot setback line from I-66, which he stated was now an Ordinance requirement; a red line, which he said was the 65-decibel level line that was contained in the noise study done with the rezoning; and a noise wall to be installed near I-66 where the Centreside rezoning was.

Mr. McBride said the map showed other BZA actions. He said Parcel 16 was approved for a variance for a side yard and it was an identical illegal lot situation, it was not flagged and had a building permit. He stated that the property next to it had a variance for a side yard. He pointed out other lots with side yard and front yard variances and a width variance. Mr. McBride stated that in 1977 the property immediately next to the Hickerson property was granted a variance for two lots, although the original application was for more. He said the property was subdivided and the top lot was assembled and included in the PDH-3 rezoning.

~ ~ ~ November 19, 2002, JAMES L. HICKERSON, VC 2002-PR-075, continued from Page 55

Mr. McBride said the most important thing on the map was variance application Number 93 that was approved September 17, 2002, which was a variance to lot width that allowed a subdivision for two lots in a pipe stem fashion identical to the subject application. He said staff had the same analysis in its staff report on that application.

Mr. McBride discussed the unusual nature of the subject property, saying that it had a house and a garage that were built in 1936 when the lot was created that was within the 200-foot highway noise setback and did not meet the current Ordinance requirements of Section 2-414. He stated that their proposal was to subdivide the property to build two new homes that were outside of the setback.

Mr. McBride stated that the landowner could not obtain building permits to rebuild the house, to expand the house, or to do major repair. He said that the property was frozen into the current situation and structure, and even if the illegal lot issue were resolved, the landowner could not expand the house because it was within the 200-foot setback area. Mr. McBride stated that all the other lots on the Shreve Subdivision within the PDH zoning that adjoined the 200-foot setback line had been re-subdivided.

Mr. McBride explained that because of the shape of the subject lot, the fact that it was within the 200-foot highway noise setback, and the lot yield of the subdivision, it wasn't desirable to have included it with the PDH zoning. He stated that the issue could not be resolved by rezoning the subject property because the PDH-3 District required a two-acre minimum district size. He said the only way the property owner could get a building permit to do anything or to continue to use his property for single-family purposes was to subdivide it through a variance of lot width so he could use his property in the future under its R-3 zoning. Mr. McBride said the subject property met every other requirement of the R-3 zoning except for lot width for the second lot.

Mr. McBride presented the proposed plat and pointed out the two lots, the pipe stem lot in the back, the regular lot in the front, the 200-foot setback to I-66, and the building envelope. He said the rear lot faced forward and the front lot was angled, sharing a driveway on the pipe stem to avoid having two soldier lots where the front door of one house looked into the rear bedroom of the other house. He pointed out a dedication of ten feet for the frontage for Virginia Lane, which he said was needed for the standard right-of-way section for that road.

Mr. McBride quoted from the application, "There are no land use issues associated with this application." He explained that if the case involved zoning, in terms of density and lot size, it met the requirements and had larger lots than the PDH-3 which abutted it to the north. He said right-of-way was dedicated, and it met all Ordinance requirements except for lot width.

Mr. McBride said the applicant proposed a six-foot board-on-board fence on top of a two-and-a-half-foot berm for privacy and noise attenuation.

Mr. McBride stated that they agreed to the development conditions, with two exceptions. He proposed an alternative Condition Number 3, which deleted the language concerning exterior noise levels and stated that the 70 dBA line addressed in Condition 3B was not applicable.

Mr. McBride explained that the property met Standards 2 and 3 because it was a narrow piece of property that had an unusual shape with an unusual length-to-width ratio that caused it to not be able to be subdivided even though it met every other requirement under its current R-3 zoning. He said it had an unusual situation in that the front corner was within the 200-foot highway noise setback for I-66. In addition, he said that the fact that it was frozen and could not get building permits until it was subdivided through a variance was an unusual situation.

Mr. McBride stated that the property met Standards 4 and 5 dealing with undue hardship because the situation initially arose in 1936 when it was conveyed by metes and bounds. He said the 200-foot setback was imposed on the property in 1978 and that nothing could be done with the property until it was subdivided. He stated that none of that was the fault or caused, directly or indirectly, by the current owner.

Mr. McBride said that the property met Standard 6 because there was no reasonable use of the property without the variance under its current zoning and not even under its current development because the house was going to need future repair and expansion. He stated that the property owner was being precluded from



~ ~ ~ November 19, 2002, JAMES L. HICKERSON, VC 2002-PR-075, continued from Page 56

being able to remodel or rebuild his house when he could do it meeting all Ordinance requirements through a variance and subdivision.

Mr. McBride said that the property met Standard 9 because the public interest was enhanced by the application, and there would be a dedication along Virginia Lane. He said it would be in the public interest to take a lot that was nonconforming as to location, and make it conforming and to develop according to the existing zoning and Comprehensive Plan recommendations in a manner which fit into the existing development fabric.

Mr. Hammack asked Mr. McBride if he had an opportunity to review the revised development conditions that were handed out at the hearing. Mr. McBride replied that he had not, but that his understanding was that the only change was the change in the decibel levels.

Mr. Hammack asked why 39 instead of 45 and 28 instead of 37. Mr. McBride explained that the higher the number, the higher the soundproofing standard. He said they were just reversed and it was typographical error.

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

Mr. Hammack moved to approve VC 2002-PR-075 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

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 proposed Lot 2 having a lot width of 20.02 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, 9/24/02 and 10/15/02 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 November 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 has satisfied the nine required standards for a variance.
3. The character of the zoning district will not be changed and the additions are in harmony with the intended spirit and purpose of the Ordinance.
4. There would be a hardship if the variance was not granted.

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

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

~ ~ ~ November 19, 2002, JAMES L. HICKERSON, VC 2002-PR-075, continued from Page 57

adjacent to the subject property.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 17 as shown on the plat prepared by Peter R. Moran, dated October 4, 2001, as revised through September 23, 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. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. No portions of the proposed dwellings shall encroach into the 200 foot setback from the right-of-way of an Interstate Highway (I-66). Attenuation of exterior noise shall be provided by the provision of fences and berms, as shown on the VC Plat. In addition:
  - A. In order to reduce the maximum interior noise to a level of approximately 45dBA Ldn for all units located within the projected 65-70 dBA Ldn highway noise impact area, the following acoustical attributes shall be employed on all facades within 235 feet of I-66.

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

Doors and windows shall have laboratory sound transmission class (STC) rating of at least 28 unless glazing constitute more than 20% of any façade the windows shall have laboratory sound transmission class (STC) rating of no less than 39.

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.

- B. In order to reduce the maximum interior noise to a level of approximately 45 dBA Ldn for all units located within the projected 70-75 dBA Ldn highway noise impact area, the following acoustical attributes shall be employed:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

Doors and windows shall have laboratory (STC) rating of at least 28. If windows constitute more than 20% of any facade exposed to the highway noise source, then the doors and windows

shall have laboratory (STC) rating of at least 39.

Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

- C. In order to reduce the maximum exterior noise level in affected rear and/or side yards to 65 dBA Ldn, noise attenuation measures such as acoustical (architecturally solid, no gaps) fences, walls or earthen berms, or combinations thereof shall be provided for areas unshielded by the existing VDOT sound wall, topography or built structures as determined by the Department of Public Works & Environmental Services (DPWES).

As an alternative to the above, prior to subdivision plan approval, the applicant may elect to have a refined acoustical analysis performed subject to approval by DPWES, to verify or amend the noise levels and impact area set forth above and/or to determine which units may have sufficient shielding to permit a reduction in the mitigation measures prescribed above or which may include alternative measures to mitigate noise impact on the site.

Alternative measure to those described within Paragraphs A and B above may be pursued if the noise study demonstrates, to the satisfaction of DPWES that these measures will be sufficient to attain a maximum interior noise level of DNL 45 dBA. Should the noise study show that the interior and exterior noise levels cannot be attained in a proposed lot, then no dwelling unit will be permitted to be built on said lot. Finally, prior to executing all sales contracts, a copy of this noise study shall be given to all prospective purchasers for review.

5. 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).
6. 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. If deemed necessary by the Urban forester, prior to any land disturbing activities for construction, a pre-construction conference shall be held between 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 and areas of tree preservation. 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 November 27, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 19, 2002, (Tape 2), Scheduled case of:

9:00 A.M. MANTUA HILLS SWIMMING ASSOCIATION, SPA 81-P-089-3 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-P-089 previously approved for a community swimming pool and tennis courts to permit increase in membership and development condition and site modifications. Located at 9330 Pentland Pl. on approx. 4.68 ac. (3.98 ac. in Fairfax County) of land zoned R-3. Providence District. Tax Map 58-2 ((1)) 3 and 3B.

Mr. Hammack disclosed that he was a member of the club and would not participate with 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. Ms. Mary Mall, 3301 Edenvale Road, Fairfax, President of the Board of Directors, and agent for the swim club, replied that it was.

Mr. Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the club wanted to increase its membership and make changes to the development conditions concerning the tennis courts' lighting and the hours of loudspeakers use, and to make site modifications regarding the clubhouse hours and pool use and to install lighting in the parking lot area. Mr. Bernal said staff recommended approval.

Ms. Mall explained that the Club hoped to replace its 25-year old existing lights with ones that slightly exceeded the special use permit's specified 24-foot height limit. Although there were never complaints with the current lighting, she noted, the newer lights were unobtrusive lamps that focused downward. The club also sought permission, she said, at sometime in the future, to light two existing tennis courts. She explained the necessity to light the parking lot area. Ms. Mall said changes to the by-laws were necessary in order to increase the Club's membership and she requested the Board's approval in order to make the changes.

In response to Mr. Ribble's question, Mr. Bernal explained the height limitations for lights in different areas on the site.

Ms. Susan Langdon, Chief, Special Permit and Variance Branch, further clarified the different lighting standards for specific areas such as a parking lot and a tennis court.

Mr. Bernal assured Ms. Gibb that staff had approved the site's lighting considering the proposed adjacent residential development.

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

Mr. Pammel moved to approve SPA 81-P-089-3 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

MANTUA HILLS SWIMMING ASSOCIATION, SPA 81-P-089-3 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-P-089 previously approved for a community swimming pool and tennis courts to permit increase in membership and development condition and site modifications. Located at 9330 Pentland Pl. on approx. 4.68 ac. (3.98 ac. in Fairfax County) of land zoned R-3. Providence District. Tax Map 58-2 ((1)) 3 and 3B. 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 19, 2002; and

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

1. The applicants are the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for special

permit uses.

3. Staff has recommended endorsement of the application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, 9330 Pentland Place (4.68 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 Mark W. Baker, dated February 18, 1994 as revised through July 11, 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. Parking shall be provided as shown on the special permit plat. All parking shall be on-site.
6. Hours of operation shall be limited as follows,
 

Swimming Pools:	7:30 am to 12:00 pm for practice only and swim lessons. 10:00 am to 12:00 pm for swim lessons 12:00 pm to 9:00 pm for full membership.
Tennis Courts:	6:00 am to 10:00 pm

These hours shall apply throughout the entire year.
7. Parties and functions after 9:00 pm at the Mantua Hills Swimming Association shall be governed by the following:
  - Limited to six (6) outdoors from Memorial Day through Labor Day weekend. All other functions shall be held indoors.
  - Weekend and holiday parties shall not extend beyond 12:00 midnight, except clean-up may be extended beyond this time.
  - The clubhouse may be used Monday through Thursday and Sunday until 10:30 pm.
8. Lighting of the site shall be in accordance with the following:
  - The combined height of the light standards and fixtures for the tennis courts shall not exceed 30

~ ~ ~ November 19, 2002, MANTUA HILLS SWIMMING ASSOCIATION, SPA 81-P-089-3, continued from Page 61

feet and shall be full cut-off lights.

- The combined height of the light standards and fixtures for all other portions of the site shall not exceed 12 feet and shall be full cut-off lights. (new light proposed in parking lot adjacent to tennis courts)
  - 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.
9. No loudspeakers shall be used before 9:00 am, and the use of the loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code and only during swim meets. The maximum decibel level of the loudspeakers shall not exceed 55 dBA at the property line.
  10. The existing vegetation as shown on the plat shall be maintained and shall be deemed to satisfy the Transitional Screening requirements along all the lot lines.
  11. The barrier requirement shall be waived along all lot lines and the fences shown on the revised plat that are located in the interior of the site shall be maintained.
  12. The maximum number of family memberships shall be 600.
  13. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during the pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer lines by using the following guidelines for all pool discharge materials.
    - All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during drainage or cleaning operations; add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a ph level approximately equal to that of the receiving stream and as close to the neutral (a ph of 7) as possible.
    - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could 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.
  14. An access easement shall be recorded if necessary, for the maintenance purposes of the stormwater facility located to the south of the site on Tax Map 58-2((1)) pt. 14.

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.

~ ~ ~ November 19, 2002, MANTUA HILLS SWIMMING ASSOCIATION, SPA 81-P-089-3, continued from Page 62

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 November 27, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 19, 2002, (Tape 2), Scheduled case of:

9:30 A.M. HONG KI KIM, A 2002-MV-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that repair of fire damage to existing service station is deemed to be replacement and, therefore, special exception approval would be required under Zoning Ordinance provisions. Located at 6817 Richmond Hwy. on approx. 15,553 sq. ft. of land zoned C-8. Mt. Vernon District. Tax Map 93-1 ((18)) (A) 1. Admin Moved to 1/21/03 Per appl. Req.

Chairman DiGiulian announced that Appeal A 2002-MV-029, Hong Ki Kim, was administratively moved to January 21, 2003.

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~ ~ ~ November 19, 2002, (Tape 2), Scheduled case of:

9:30 A.M. INTERNATIONAL CALVARY CHURCH, A 2002-LE-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant continues to operate a place of worship without an approved Non-Residential Use Permit in violation of Zoning Ordinance provisions as cited in a May 16, 2001 Notice of Violation. Located at 5700 Hanover Ave. on approx. 1.09 ac. of land zoned I-3. Lee District. Tax Map 80-1 ((1)) 6.

Ms. Jayne Reale, Assistant to the Zoning Administrator, stated that the appellant continued to operate a place of worship without an approved Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. She stated that a Notice of Violation was issued May 16, 2001, and staff worked with the appellants to resolve the issues for almost a year, but after a second complaint was received, a second Notice of Violation was issued on July 2002. She clarified that the second Notice was the subject of the appeal. Ms. Reale explained that the original Notice was not appealed within 30 days and its determination became final and the activities that constituted the violation could not be challenged. She stated that the sole issue to be challenged in this appeal was the determination that the violation cited in the original May 16, 2001, Notice continued.

In response to Mr. Hammack's question on why staff issued a second Notice of Violation, Ms. Reale explained that staff again tried to work with the appellant to reach a resolution. She responded to Mr. Hart's questions concerning the appellant's building permits time extension, obtaining its Non-RUP, and Zoning Enforcement's cooperation in allowing the church 18 months to obtain the necessary funding for the required improvements.

Mr. Ed Pugh, Agent, conceded that the church could not obtain the necessary permits without completing the required renovation improvements but assured the BZA that they were proceeding more quickly than previously.

Mr. William Shoup, Deputy Zoning Administrator, explained to Mr. Hammack building Code language for office use versus a place of assembly, and the pertinence of an occupancy load for 180 people. He clarified that until the church constructed the necessary improvements in accordance with the building permit that was issued, the issuance of a Non-RUP for a place of assembly was impossible.

Chairman DiGiulian commented that if a deferral was granted, when the appellants came before the Board at some later date, it would again be the same situation as the alleged violations had occurred for quite some time. He asked Mr. Pugh if there were any assurances of the work's completion by June, 2003.

~ ~ ~ November 19, 2002, INTERNATIONAL CALVARY CHURCH, A 2002-LE-030, continued from Page 63

In response to Chairman DiGiulian's question, Mr. Pugh said he could not commit to a completion date of June, 2003, but would assure the BZA that once construction commenced, until its completion, no services would be held until the permits were obtained. He explained that there were two possible dates construction could commence, the beginning of 2003, depending on the weather, with a completion date targeted for sometime in June, 2003, or a spring construction commencement, and with the extensive renovations to be performed, they still targeted June, 2003 for completion; however, it was not guaranteed. Mr. Pugh said that if an extension was denied and no services were allowed, the church would have to secure another location to hold their services.

Ms. Reale said staff sympathized with the appellants' situation, noting that funding had been the problem, but staff had no guarantee that once construction commenced, there would be sufficient funding for its completion. Ms. Reale requested that the Board make its determination to uphold the Zoning Administrator.

Mr. Pugh submitted that the church's credit rating was recently established and the property was refinanced at a lower rate. He pointed out that the church had made strides to address the financial situation and was in the process of securing a construction loan. Mr. Pugh stated that they were making a good faith effort to address the problems and resolve the issues.

Responding to Mr. Hart's question, Mr. Shoup explained that staff had not prosecuted the church for the first violation because they wanted to give them the benefit of doubt and work with them to give them the time to resolve the violations. A second Notice of Violation was issued to prompt them to action, he said, but when the second Notice was appealed, that effectively prevented a court action for the first Notice.

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

Mr. Hart stated that it was his belief that there was progress towards a resolution. He pointed out that the church was a by-right use within the zoning district and had attained a number of County approvals to date. Because staff had evidenced good faith by not prosecuting the initial violation, he said, he too believed the issues would be resolved and that the appellant's representative had indicated the same.

Mr. Hart moved to defer the decision on International Calvary Church, A 2002-LE-030, to May 20, 2003, at 9:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

Mr. Hart urged the appellants to obtain its construction loan and proceed with the construction improvements within a reasonable time-frame.

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~ ~ ~ November 19, 2002, (Tape 2), After Agenda Item

Approval of November 12, 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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~ ~ ~ November 19, 2002, (Tape 2), After Agenda Item

Approval of Revised Plat  
Bruce Brasher, VC 2002-SP-121

Ms. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the applicant had requested approval of a variance to permit an addition 4.4 feet from the site lot line. The Board had approved the variance for five feet and charged the applicant to submit a new plat. Ms. Langdon pointed out that the new plat showed the addition slightly more than 5 feet from the side lot line.

Mr. Pammel moved to approve the plat as submitted. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ November 19, 2002, continued from Page 64

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

Minutes by: Paula A. McFarland

Approved on: November 18, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, November 26, 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.

~ ~ ~ November 26, 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. (Cont'd from 10/29/02)

Mr. Hart gave a disclosure but indicated that would not affect his ability to 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. Bob Lawrence, 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 case was continued from October 29, 2002, to allow time for the applicant and citizens to meet to discuss the issues. Ms. Langdon stated that the applicant submitted revised proposed development conditions and a revised plat. She said staff did not object to the changes, but made revisions to conditions #11 and #13.

Mr. Hart asked, under the revised conditions, whether the stormwater management had to be on site. Ms. Langdon replied yes and that the applicant proposed to place it underground.

Mr. Pammel asked the applicant to explain, in his presentation, the specifics of how the application met the criteria of the Comprehensive Plan.

Mr. Lawrence stated that prior to the original hearing, they had made numerous changes to the plan as a result of meetings with the citizens. He said they relocated the building farther away from the property line, increased the tree save area, relocated parking away from adjacent parcels, relocated the preschool area, and minimized tree clearing. Mr. Lawrence said they received a packet of information from the citizens outlining changes they wanted to the development conditions. He summarized the proposed changes submitted by the citizens and indicated how the applicant had addressed each one of the issues. Mr. Lawrence submitted photographs indicating the height of the trees in relationship to the proposed height of the building.

Chairman DiGiulian asked if the majority of the trees were on the applicant's property. Mr. Lawrence replied yes.

Mr. Pammel asked about installing a traffic signal and a left turn lane. Mr. Lawrence stated that after conversations with the Virginia Department of Transportation (VDOT), he was informed that there was no need for a traffic signal and conditions did not warrant a left turn lane.

Chairman DiGiulian called for speakers.

Barbara Anderson, no address given, Randall Byrnes, 1108 Round Pebble Lane, Rob Gustis, no address given, and Larry Butler, Reston Association, came forward to speak in opposition to the application. They expressed concerns relating to the size and scale of the building, traffic, screening, noncompliance with the Comprehensive Plan, and stormwater management.

Mr. Lawrence stated in his rebuttal that the height of the building was 45 feet which was under County standards. He said the Department of Transportation had no problem with the traffic based on the number of seats. Mr. Lawrence stated that a left turn lane was not warranted and screening would be provided. He said there would be stormwater management on site and extra parking was provided to avoid parking in the community.

~ ~ ~ November 26, 2002, GOOD SHEPHERD LUTHERAN CHURCH, SP 2002-HM-045, continued from Page 67

Chairman DiGiulian closed the public hearing.

Mr. Pammel said he visited the site and there was no question that a transitional use of the property for a church was appropriate. He said he was concerned with the scale and the impact being generated by the proposed facility. Mr. Pammel said several recommendations had been made by the community dealing with transportation and the applicant had responded to that. He said he disagreed and believed that a left turn lane was warranted. Mr. Pammel said the issue of parking had been addressed, even though the community desired to have parking less than what was on the plan. He said the impact of the building was significant and the applicant had not addressed the Comprehensive Plan provisions with respect to that issue. Mr. Pammel said this was a significant mass of building abutting the properties to the east. He said he was concerned with height of the structure, the mass of the building, and the creation of a significant impact on adjacent properties. Mr. Pammel moved to deny the application.

Mr. Hammack seconded the motion for purposes of discussion. He said he was concerned with the size, height, and impact on adjacent properties. Mr. Hammack said the length of the building gave it the appearance of a commercial property. He said a lot of the application met the required standards. Mr. Hammack said the applicant had addressed the screening and traffic issues.

Mr. Hart said he would oppose the motion. He said the applicant had done what they could with respect to the height of the building, but he was not persuaded with that with the supplemental vegetation and the configuration of the building, the impact on the neighbors to the east would be significant enough to justify a denial of the application. Mr. Hart said the fact that it borders a 4-lane divided highway made it difficult as a residential building site.

Chairman DiGiulian stated that he would oppose the motion and felt that the application met the requirements of the Comprehensive Plan.

The motion failed by a vote of 2-5. Chairman DiGiulian, Mr. Hart, Mr. Ribble, Ms. Gibb and Mr. Kelley voted against the motion.

Mr. Hart moved to approve SP 2002-HM-045 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

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. (Cont'd from 10/29/02) 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 November 26, 2002; and

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

1. The applicant is the contract purchaser of the land.
2. The applicant presented testimony indicating compliance with the required standards for a special permit.
3. The size and scale of the building in the context of the Comprehensive Plan language, is the most difficult part of the application, but with the plan drawings and the existing vegetation, coupled with the supplemental plantings, the impacts to the East are largely mitigated.

~ ~ ~ November 26, 2002, GOOD SHEPHERD LUTHERAN CHURCH, SP 2002-HM-045, continued from Page 68

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, (7.93 acres) and is not transferable to other land.
2. This Special Permit is granted only to permit a church and nursery school as indicated on the special permit plat prepared by Burgess & Niple, Inc. dated July 2002, as date stamped through November 25, 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. So that the proposed facilities are designed and constructed to be architecturally compatible with the surrounding residential development, they shall be constructed utilizing building materials such as face brick, architectural precast stone or other building materials and colors which are compatible with the surrounding residential neighborhood and should be in substantial conformance with the drawing provided by Robson Group Architects, Inc.
5. The maximum number of seats in the church shall be 500.
6. Parking shall be provided as shown on the special permit plat. All parking shall be on-site.
7. The total maximum daily enrollment for the nursery school shall be 100 children.
8. The maximum hours of operation for the nursery school shall be from 9:00 a.m. to 3:00 p.m., Monday through Friday.
9. The outdoor play area shall be a maximum of 5,000 square feet and shall be enclosed with a five (5) foot high board on board fence as show on the special permit plat.
10. 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. Irrespective of the limits shown, 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 Division, 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/or existing utility easements and if any feature is eliminated or reduced in size, the area of that feature shall become part of the

perpetually undisturbed open space.

A tree preservation plan shall be submitted to the Urban Forestry Division of DPWES for review as part of the first submission of the site plan. No plans shall be approved or grading activities conducted on site until the tree preservation plan is approved. The tree preservation plan shall include a tree inventory and a tree condition analysis prepared by an arborist certified by the International Society of Arboriculture, for all trees 12" caliper and greater located within 20 feet of either side of the proposed limits of clearing and grading. The condition analysis shall be conducted using the method described in the Guide for Plant Appraisal, eight edition, published by the International Society of Arboriculture. The tree preservation plan shall also include recommendations for pre-construction treatment of trees shown to be preserved.

All trees shown to be preserved on the tree preservation plan shall be protected by 14 gauge, welded wire, fencing, a minimum of four feet in height, placed at the limits of clearing and grading to preclude intrusion into the tree save areas. The fencing shall be installed prior to any work being conducted on site, and shall be made clearly visible to all construction personnel.

11. Existing vegetation along the eastern and southern lot lines shall be preserved and maintained as depicted on the special permit plat. Supplemental evergreen plantings shall be provided as needed along the eastern and southern lot lines in order to obtain the effectiveness of Transitional Screening I as determined by the Urban Forestry Division. Foundation plantings shall be provided around the church structure in order to soften the impact of the proposed use and structure. Notwithstanding what is shown on the special permit plat, a row of evergreen shrubs/trees shall be planted in the area between the parking lot and driveway areas adjacent to Lot 34B in order to mitigate any potential vehicle headlight glare onto the proposed adjacent property. Additionally, notwithstanding what is shown on the Special Permit Plat, the proposed plantings depicted along the eastern and southern lot lines within the tree save area, shall be modified from that shown on the plat. A single row of shade tolerant evergreen trees shall be planted along the eastern and southern lot lines and shall be field located to avoid damaging existing vegetation. The remaining proposed trees as depicted shall be located outside the tree save areas, between the save areas and the buildings and parking/driveway areas. The number, size, location and species of all plantings shall be as approved by the Urban Forester.
12. The barrier requirements shall be waived along all lot lines. In lieu of the chain link fence previously shown on the Special Permit Plant, a minimum 6 foot high board on board fence shall be provided 25 feet from the property line along the eastern and southern boundaries of the property that are adjacent to existing residential lots.
13. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as on-site as determined by DPWES. The outfall from the Applicant's SWM/BMP facilities shall be directed into the existing creek north of the proposed limits of clearing and grading. No vegetation in addition to that depicted on the special permit plat shall be cleared to meet the requirements except to provide the outfall, which shall be the minimum amount feasible.
14. 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.
  - The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
  - There shall be no up-lighting of any of the proposed building or any sign.

- Outdoor building mounted security lighting shall also be shielded and directed inward to prevent glare.
15. Subject to review and approval by the Virginia Department of Transportation (VDOT) and DPWES, the pavement widening to 26 feet from the centerline of Reston Avenue as shown on the special permit plat shall be striped as a right turn lane in to the site. The applicant shall provide a left turn lane within the existing right-of-way (ROW) by re-striping the existing pavement on Reston Avenue, subject to VDOT approval of design at the time the church is constructed or by re-striping when additional ROW/pavement is available, when determined feasible by VDOT. In addition, the entrance to the site shall be widened to 36 feet to accommodate two lanes of traffic exiting the facility with one lane entering the facility.
  16. Twenty-five (25) feet of right-of-way shall be dedicated along the site frontage on Route 7 in fee simple to the Board of Supervisors at the time of site plan approval, or upon demand, whichever occurs first.
  17. Accommodations shall be provided as needed for the future construction of an inter-parcel access by others between the subject site and parcel 11-2 ((1)) 34B. Unrestricted inter-parcel access between the two parcels shall be provided.
  18. If necessary, a public access easement for the access between Lots 34B, 35 and 34C shall be recorded.
  19. The dwelling located on Lot 35 shall only be occupied as a residence by an employee and his/her family that is directly related to the church and/or nursery school uses. Any future development, expansion or change in the use of the dwelling located on Lot 35, shall require a special permit amendment.
  20. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
  21. Heating or air conditioning and associated mechanical systems (HVAC systems) shall be subject to Zoning Ordinance performance standards with respect to noise levels, and shall be surrounded by vegetative screening and/or fencing so as to minimize the exterior noise to the maximum extent possible.
  22. Trash dumpsters shall be screened with wood or masonry enclosures which are designed to be compatible with the buildings. They shall be further screened from the adjacent residential properties with vegetation. Refuse and trash removal shall be permitted only between the hours of 7:00 a.m. and 6:00 p.m. weekdays.
  23. Outdoor and exterior construction shall be permitted only between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday and 8:00 a.m. to 6:00 p.m. on Saturdays.
  24. In the event blasting is necessary, before any blasting occurs on the property, the applicant shall; (i) ensure that the Fairfax County Fire Marshal has reviewed the blasting plans; (ii) follow all safety recommendations made by the Fire Marshal; and (iii) provide independent qualified inspectors approved by DPWES to inspect wells located within 500 feet of the blasting site where access is granted by the property owner to implement this proffer (the "Inspected Wells"). The inspector shall check the flow rate for each of the Inspected Wells immediately before and immediately after blasting within 500 feet of the Inspected Wells. If allowed by County or State regulations, the applicant shall repair any damage to, or at its sole discretion, may replace the Inspected Well(s) determined by the inspector to have been damaged as a result of blasting on the property, at applicant's option, or the applicant shall pay for hook up of public water to serve any house whose well has been damaged by blasting on the property.
  25. The height of the building shall not exceed 45 feet and the height of the spire/tower/steeple shall not exceed 60 feet, all as measured in accordance with the definitions of "HEIGHT, BUILDING," and

~ ~ ~ November 26, 2002, GOOD SHEPHERD LUTHERAN CHURCH, SP 2002-HM-045, continued from Page 71

"GRADE" as set forth on pages 20-24 of the current Fairfax County Zoning Ordinance."

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

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

Mr. Kelley seconded the motion, which carried by a vote of 5-2. Mr. Pammel 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 December 17, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS D. RYAN, JR., VC 2002-LE-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. from side lot line and 6.0 ft. high fence to remain in a front yard of a corner lot. Located at 5547 Dunsmore Rd. on approx. 11,147 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 51.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Ryan, 5547 Dunsmore Road, 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 10.7 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 1.3 feet was requested. The applicant also requested a variance to allow a 6.0 foot high fence to remain in the front yard of a corner lot. A maximum fence height of 4 feet is required; therefore, a variance of 2.0 feet was requested.

Chairman DiGiulian recused himself from the public hearing because his office had prepared the applicant's plat.

Mr. Ryan 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. Ryan said there would be no change in the footprint. He stated that the 6 foot fence was on the property when he purchased the house. Mr. Ryan said the fence ran along Telegraph Road and the property value would be increased if the fence was allowed to remain.

Ms. Gibb asked if the fence was a board on board fence. Mr. Ryan replied that it was more of a stockade type fence.

Mr. Hart asked if the fence was in the right-of-way. Mr. Ryan replied that the fence was 1-foot into the right-of-way.

Mr. Hart asked if the fence met sight distance requirements. Susan Langdon, Chief, Special Permit and Variance Branch, replied yes.

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



~ ~ ~ November 26, 2002, THOMAS D. RYAN, JR., VC 2002-LE-142, continued from Page 72

Ms. Gibb moved to approve VC 2002-LE-142 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS D. RYAN, JR., VC 2002-LE-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. from side lot line and 6.0 ft. high fence to remain in a front yard of a corner lot. Located at 5547 Dunsmore Rd. on approx. 11,147 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 51. 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 26, 2002; and

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

1. The applicant is the owner of the land.
2. The request for the side yard variance is a modest 1.3 feet from the side lot.
3. The impact on adjacent properties is minimal.
4. The shape of the lot and the location of the house merits approval of the application.
5. It is reasonable to have a 6 foot high wood fence on the property since it borders Telegraph Road.

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

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

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

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

~ ~ ~ November 26, 2002, THOMAS D. RYAN, JR., VC 2002-LE-142, continued from Page 73

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

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

1. This variance is approved for the location of a garage enclosure of a carport, as shown on the plat prepared by Kenneth A. Marceron, dated August 23, 2002, as revised through August 26, 2002, submitted with this application and is not transferable to other land. Should VDOT require relocation of the fence, the variance shall be approved for the location of the fence, as generally shown on the plat, but located on the applicant's property.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage enclosure shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel were not present for the vote, and Chairman DiGiulian recused himself from the public hearing.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. HARESH CHAWLA, SP 2002-BR-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.4 ft. from side lot line. Located at 4711 Philadelphia Pl. on approx. 11,919 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 213.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Shobha Chawla, 4711 Philadelphia Place, 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 allow a reduction to minimum yard requirements based on an error in building location to permit an addition to remain 8.4 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 3.6 feet was requested.

Ms. Chawla presented the request as outlined in the statement of justification submitted with the application. She said the request was to be allowed to keep an existing enclosed carport. Ms. Chawla stated that they received a building permit from the County but it had expired. She submitted a letter in support of the application.

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

Mr. Kelley moved to approve SP 2002-BR-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**

HARESH CHAWLA, SP 2002-BR-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.4 ft. from side lot line. Located at 4711 Philadelphia Pl. on approx. 11,919 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 213. 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 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 a garage, as shown on the plat prepared by Bryant L. Robinson, dated July 29, 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.

~ ~ ~ November 26, 2002, HARESH CHAWLA, SP 2002-BR-049, continued from Page 75

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ November 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT E. & TERRY L. BERGER, VC 2002-SU-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. from rear lot line. Located at 14210 Rock Canyon Dr. on approx. 8,242 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-3 ((4)) 80.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Berger, 14210 Rock Canyon Drive, Centreville, 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 22.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 2.1 feet was requested.

Mr. Berger presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to construct a Florida Room over the existing deck.

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

Mr. Ribble moved to approve VC 2002-SU-148 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. & TERRY L. BERGER, VC 2002-SU-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.9 ft. from rear lot line. Located at 14210 Rock Canyon Dr. on approx. 8,242 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-3 ((4)) 80. 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 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 lot is shallow.
4. The variance request is minimal and only a small portion of the addition requires 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;

~ ~ ~ November 26, 2002, ROBERT E. & TERRY L. BERGER, VC 2002-SU-148, continued from Page 76

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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, dated April 12, 2002, as revised through August 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.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. JOHN W. TAYLOR, VC 2002-MV-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 30.0 ft. from front lot line. Located on the S. side of Nicotine Tr., approx. 600 ft. E. of its intersection with Moul Rd. on approx. 21,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (40) 11 - 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. John Taylor, 9000 Patton Boulevard, 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 a dwelling 30 feet from the front lot line. A minimum front yard of 50 feet is required; therefore, a variance of 20 feet was requested.

Mr. Taylor presented the variance request as outlined in the statement of justification submitted with the application. He said he was informed by the National Wildlife that there was an eagle's nest on the property. Mr. Taylor said the variance would allow the house to be placed further away from the eagle's nest. He said there were large trees on the lot and in the rear of the property was a septic tank. Mr. Taylor said there was a tree preservation area located behind the house.

Mr. Hart asked who owned Lot A. Ms. Josiah stated that it was owned by the homeowners association.

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

Mr. Hammack moved to approve VC 2002-MV-149 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN W. TAYLOR, VC 2002-MV-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 30.0 ft. from front lot line. Located on the S. side of Nicotine Tr., approx. 600 ft. E. of its intersection with Moul Rd. on approx. 21,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (40) 11 - 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 November 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 subdivision is old and the lots are narrow and substandard.
4. The applicant consolidated lots in order to construct a dwelling.
5. The staff report reflects numerous variances in the subdivision that have allowed houses to remain less than 30 feet from a front lot line and some more than 30 feet.
6. The variance will not be detrimental to the adjacent properties nor change the spirit or purpose of the Ordinance or be contrary to the public interest.
7. The applicant is accommodating a tree save area required by the Federal Fish and Wildlife organization.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

~ ~ ~ November 26, 2002, JOHN W. TAYLOR, VC 2002-MV-149, continued from Page 78

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 W. Harry Ervin, dated May 15, 2002, as revised through August 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.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 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 4, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ALBERT E. WHITTAKER, II AND KAREN LYNN WHITTAKER, VC 2002-MA-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.6 ft. and eave 6.6 ft. from side lot line, 7.5 ft. high fence to remain in front yard, and accessory

~ ~ ~ November 26, 2002, ALBERT E. WHITTAKER, II AND KAREN LYNN WHITTAKER, VC 2002-MA-140, continued from Page 79

structure in front yard of a lot containing 36,000 sq. ft. or less to remain. Located at 4817 Virginia St. on approx. 10,192 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((10)) 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. Albert Whitaker II, 4817 Virginia 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 Juan Bernal. The applicant requested variances to permit the construction of an addition 7.6 feet and eave 6.6 feet from the side lot line. A minimum side yard of 5 feet and an eave of 12 feet is required; therefore, variances of 7.4 and 5.4 feet were requested. The applicant also requested a variance to permit a 7.5 foot high fence to remain in the front yard. A maximum fence height of 4 feet is required; therefore, a variance of 3.5 feet was requested. The applicant also requested a variance to permit an accessory structure to remain in the front yard of a lot containing less than 36,000 square feet.

Mr. Whitaker presented the variance requests as outlined in the statement of justification submitted with the application. He said fence in the front yard was needed for privacy. Mr. Whitaker said the carport was needed to store cars.

Mr. Ribble asked if the lot was narrow. Mr. Whitaker replied yes.

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

Mr. Hart moved to approve VC 2002-MA-140 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALBERT E. WHITTAKER, II AND KAREN LYNN WHITTAKER, VC 2002-MA-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.6 ft. and eave 6.6 ft. from side lot line, 7.5 ft. high fence to remain in front yard, and accessory structure in front yard of a lot containing 36,000 sq. ft. or less to remain. Located at 4817 Virginia St. on approx. 10,192 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((10)) 49. 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 26, 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 unusual and is only 50 feet wide.
4. The house is oriented correctly to have a house on the lot.
5. The existing house is 7.6 feet from the side lot line.
6. There have been similar variances approved in the neighborhood.
7. The variance will not have a significant impact on the adjacent properties.
8. Based on the photographs, the fence is mitigating the impact of the adjacent property.

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



~ ~ ~ November 26, 2002, ALBERT E. WHITTAKER, II AND KAREN LYNN WHITTAKER, VC 2002-MA-140, continued from Page 80

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 (carport), fence and accessory structure, as shown on the plat prepared by Bryant L. Robinson, dated July 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 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 not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ALI & KAMRAN GERAYLI, SP 2002-HM-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.6 ft. from side lot line and 8.7 ft. from rear lot line. Located at 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with VC 2002-HM-147).

9:00 A.M. ALI & KAMRAN GERAYLI, VC 2002-HM-147 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 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with SP 2002-HM-050).

Chairman DiGiulian noted that the applications had been administratively moved to January 21, 2003.

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~ ~ ~ November 26, 2002, (Tape 1), Scheduled case of:

9:00 A.M. DAVID E. BURKS, VC 2002-PR-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line. Located at 8300 Forestree Ct. on approx. 10,218 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 39-1 ((27)) 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. David Burks, 8300 Forestree Court, Vienna, 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. The applicant requested a variance to permit the construction of an addition 22 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 3 feet was requested.

Mr. Burks presented the variance request as outlined in the statement of justification submitted with the application. He said the request was for an addition on a portion of the deck. Mr. Burks stated that the Architectural Review Board supported the application. He said the addition would be compatible with the neighborhood.

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

Mr. Ribble moved to approve VC 2002-PR-143 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID E. BURKS, VC 2002-PR-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line. Located at 8300 Forestree Ct. on approx. 10,218 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 39-1 ((27)) 18. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 2002; and

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

1. The applicant is the owner of the land.

~ ~ ~ November 26, 2002, DAVID E. BURKS, VC 2002-PR-143, continued from Page 82

2. The applicant met the required standards for a variance.
3. The shape of the lot, the shallowness of the rear yard, and the location of the house on the lot causes the need for a variance.

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

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

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

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

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

1. This variance is approved for the location of an addition (Screened Porch) as shown on the plat prepared by William E. Ramsey, dated August 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.

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

~ ~ ~ November 26, 2002, DAVID E. BURKS, VC 2002-PR-143, continued from Page 83

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ November 26, 2002, (Tape 1), 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) (Def dec. from 9/17/02)

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

Mr. Hammack stated that he would abstain from participating in the public hearing because the appeal had been deferred for decision only and he was not present at the previous public hearing.

Mr. Farrell stated that one of the reasons for the deferral was to allow staff time to review the minor site plan. He said they were trying to bring the site into compliance.

Mr. Odin stated that his client had been accused of a violation but was not told what to stop doing to not be in violation. He said his client was not hurting the community.

Jayne Reale, Zoning Administration Division, stated that the plat that accompanied the rezoning application in 1982 showed the same facilities currently on the site, but the facilities had been intensified on the property since 1982. She said although the activities associated with Handyman Concrete were not taking place within a fixed structure and might not be typical of a mixing and batching plant, all the components of concrete mixing and batching were present on the property. She said all of the raw ingredients for making concrete were stockpiled on the property and dispatched onto the mixing trucks. Ms. Reale said the mixing began while the trucks were on the property. She said the minor site plan showed a use on the property of concrete mixing and batching plant which was not permitted in the I-5 District under any circumstances. Ms. Reale stated that there was no way a minor site plan could ever be approved under any length of time as long as that use was on the property.

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

Ms. Gibb stated that she had great sympathy for the Handyman Cement Company as it had gone on for a long time. She said she did not see how it was not a plant. Ms. Gibb said when she visited the property there was a huge cloud of dust and there were 6 cement trucks parked and it seemed that the purpose of the Zoning Ordinance which restricted cement batching and mixing to an I-6 District was to minimize the impact of the particles flying in the air. She said the whole effect of the trucks, the storage materials and the overhead bin was a mixing and batching plant. She said the mixing went on in the trucks and the trucks were on the property. Ms. Gibb moved to uphold the determination of the Zoning Administrator.

Mr. Kelley seconded the motion.

Mr. Hart said this was a difficult case. He said the narrow issue was whether the operation was a batching plant. Mr. Hart said he would support the motion.

The motion carried by a vote of 5-0-1. Mr. Hammack abstained from the vote, and Mr. Pammel was not present for the vote.

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~ ~ ~ November 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Lynn A. Hill and John D. Hill, VC 98-P-010

Mr. Kelley moved to approve the Additional Time Request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date was January 10, 2003.

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~ ~ ~ November 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Centreville Presbyterian Church, SP 99-Y-065

Mr. Kelley moved to approve the Additional Time Request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date was July 1, 2003.

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~ ~ ~ November 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Jerold & Nancy Jurentkuff, VC 99-H-191,

Mr. Kelley moved to approve the Additional Time Request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date was March 15, 2005.

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~ ~ ~ November 26, 2002, (Tape 1), After Agenda Item:

Additional Time Request  
Greenbriar Civic Association, Inc, SPA 78-P-192-2

Mr. Kelley moved to approve the Additional Time Request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date was February 13, 2003.

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~ ~ ~ November 26, 2002, (Tape 1), After Agenda Item:

Approval of November 19, 2002 Resolutions

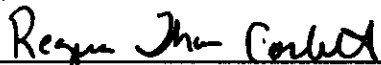
Mr. Hammack moved to approve the Resolutions. Mr. Kelley and Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:47 a.m.

Minutes by: Regina Thorn Corbett

Approved on:



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, December 3, 2002. The following Board Members were present: 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.

~ ~ ~ December 3, 2002 (Tape 1) Scheduled case of:

9:00 A.M. ROBERT H. AND REBECCA T. DICKINSON, VC 2002-PR-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line and deck to remain 11.0 ft. from rear lot line. Located at 8307 First Ave. on approx. 6,414 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (D) 6, 7 and 8. Mr. Hart stated that he had a case against the contractors who prepared the drawings for the application; and therefore, recused himself from the 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. Robert Dickinson, 8307 First Avenue, Vienna, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. She stated that the applicant requested a variance to permit the construction of a 2-story addition to be located 8.0 feet from the side lot line and a deck to remain 11.0 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 20 feet for the addition and a minimum rear yard of 13.0 feet for the deck; therefore, variances of 12.0 feet and 2.0 feet were requested, respectively.

Mr. Dickinson presented the variance request as outlined in the statement of justification submitted with the application. Mr. Dickinson submitted handouts of plans and illustrations to the Board members and stated that they were originally submitted with the application. He stated that the deck was built at the same time as the home and was approved by the County Inspector and requested the Board also approve the deck based on this fact. Mr. Dickinson stated that the height of the deck, being 5.0 feet from the ground, was most likely due to erosion. He stated that it would be a financial hardship and wasted materials to destroy the deck and rebuild a new deck to meet compliance. Mr. Dickinson stated that the request for the addition was due to the fact that the lot is exceptionally narrow and that the lot condition predated the zoning requirements for R-1 zoning. He stated that no existing vegetation would be removed and requested that the Board approve the application.

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

Mr. Hammack moved to approve VC 2002-PR-154 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT H. AND REBECCA T. DICKINSON, VC 2002-PR-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line and deck to remain 11.0 ft. from rear lot line. Located at 8307 First Ave. on approx. 6,414 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11)) (D) 6, 7 and 8. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 2002; and

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

~ ~ ~ December 3, 2002, ROBERT H. AND REBECCA T. DICKINSON, VC 2002-PR-154, continued from Page 87

1. The applicants are the owners of the land.
2. The lot is substandard.
3. The variance request is minimal considering the size of the lot.
4. Several variances have been granted based on the substandard lot sizes.
5. Granting the variance 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** with the following limitations:

1. This variance is approved for the location of an addition and deck as shown on the plat prepared by L.S. Whitson, dated, November 16, 1999, as revised by Steven G. Robinson, dated, September 18, 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.



~ ~ ~ December 3, 2002, ROBERT H. AND REBECCA T. DICKINSON, VC 2002-PR-154, continued from Page 88

Mr. Pammel seconded the motion, which carried by a vote of 5-0-1. Mr. Hart recused himself from the hearing, 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 December 11, 2002. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack noted that the Board's professional counsel was present and made a motion that they recess to go into Executive Session for consultation with legal counsel and briefings with staff members, consultants and attorneys pertaining to actual and probable litigation.

Mr. Hammack stated that the issue involved the Vanguard Services Unlimited vs. Board of Zoning Appeals and Others. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

The Board recessed at 9:14 a.m. and reconvened at 10:21 a.m.

Mr. Hart moved to certify that the Board heard only public business matters lawfully exempted from 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. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble was absent from the meeting. Mr. Hammack was not present for the vote.

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~ ~ ~ December 3, 2002 (Tape 1) Scheduled case of:

9:00 A.M. SARITA AND RAJESH KALE, VC 2002-SP-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from rear lot line. Located at 4207 Majestic La. on approx. 8,775 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((2)) (24) 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. Rajesh Kale, 4207 Majestic Lane, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the request as contained in the staff report. She stated that the variance request was for a 2-story addition to be located 16.0 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 9.0 feet was requested.

Mr. Kale presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot was exceptionally shallow and that the current distance was 31.0 feet and after the proposed addition was added, it would be 16.0 feet. Mr. Kale stated that house was too small to accommodate all members in the household and stated that the addition was the only option. He stated that the addition would not be detrimental to adjacent properties and that the immediate neighbors did not have objections to the addition; and therefore, asked for the Boards approval of the application.

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

Mr. Pammel moved to motion to approve VC 2002-SP-146 as stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

SARITA AND RAJESH KALE, VC 2002-SP-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from rear lot line. Located at 4207 Majestic La. on approx. 8,775 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((2)) (24) 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 December 3, 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 shallow.
3. The house is placed towards the rear of the property with a front set back of 37.2 feet, which facilitates the need for a variance.

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

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

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

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

~ ~ ~ December 3, 2002, SARITA AND RAJESH KALE, VC 2002-SP-146, continued from Page 90

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 July 17, 2002, as revised through July 26, 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. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 3, 2002 (Tape 1) Scheduled case of:

9:00 A.M. ADO MACHIDA, VC 2002-SU-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 16.0 ft. from rear lot line. Located at 13601 Brockmeyer Ct. on approx. 8,389 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 422.

The application was administratively moved for notices to February 4, 2003 at 9:00 a.m.

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~ ~ ~ December 3, 2002 (Tape 1) Scheduled case of:

9:00 A.M. KEVIN AND ANN MAHONEY, VC 2002-DR-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 2117 Reynolds St. on approx. 21,829 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((29)) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ann Mahoney, 2117 Reynolds Street, Falls Church, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. Ms. Langdon stated that the applicant requested an addition to be located 5.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance of 10.0 feet was requested.

Mrs. Mahoney presented the variance request as outlined in the statement of justification submitted with the application. She stated that they purchased the house in 1992 and added an upstairs and a kitchen on the house in 1998. She presented an illustration to the Board showing the history of the additions on their home. Mrs. Mahoney stated that the variance request was for an attached garage. She stated that the lot was long and narrow and only the front corner of the garage would be affected by the requirement. She stated that they had spoken to their immediate neighbors and presented their illustrations and plat and that no one had

~ ~ ~ December 3, 2002, KEVIN AND ANN MAHONEY, VC 2002-DR-151, continued from Page 91

expressed concern of the addition. Mrs. Mahoney stated that the garage, as requested, would be barely visible from the street and that most of the trees would be able to remain which would be in keeping with the nature of the neighborhood.

Mr. Hammack asked if there was any reason why the garage needed 2 single doors, which would require it to be a wider garage. Mrs. Mahoney referred to the interior drawing and stated that above the garage they would be adding a bonus room which would require stairs to access the bonus room from the mud room. She stated that a wider garage was needed due to the rooflines and a complicated angle of the stairs and to have the stairs inside the living space and not in the garage.

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

Mr. Hart moved to approve VC 2002-DR-151 as stated in the Resolution.

Mr. Kelley stated that he was not in support of the application because the requested garage was too large and the stairs inside the living area was for convenience.

Mr. Pammel agreed with Mr. Kelley also stating that the garage at 5.0 feet was too close and that the design could be reconfigured to make it more acceptable to the adjacent property.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN AND ANN MAHONEY, VC 2002-DR-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 2117 Reynolds St. on approx. 21,829 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((29)) 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 December 3, 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 the variance.
3. The lot is fairly narrow.
4. The backyard is the only feasible location to construct the garage due to the structural configuration of the existing home and its placement on the lot.
5. Only one corner of the garage requires 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

~ ~ ~ December 3, 2002, KEVIN AND ANN MAHONEY, VC 2002-DR-151, continued from Page 92

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 CRES Certified Real Estate Services, dated September 24, 1998, as revised through September 9, 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 **FAILED** by a vote of 3-3. Mr. Hammack, Mr. Kelley and Mr. Pammel voted against the motion. Mr. Kelley moved to waive the 12-month waiting period for re-filing. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was 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 December 11, 2002. This date shall be deemed to be the final decision date of this variance.

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~ ~ ~ December 3, 2002 (Tape 1) Scheduled case of:

9:00 A.M.      ROBERT E. & PATRICIA T. TYREE, SP 2002-LE-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in

~ ~ ~ December 3, 2002, ROBERT E. & PATRICIA T. TYREE, SP 2002-LE-052, continued from Page 93

building location to permit accessory structure to remain 2.1 ft. from side lot line and 2.5 ft. from rear lot line. Located at 5623 Norton Rd. on approx. 7,200 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((13)) 88.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patricia Tyree, 5623 Norton Road, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. The applicant requested a special permit to permit a detached garage to remain 2.1 feet from the north side lot line and 2.5 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 10.0 feet and a minimum rear yard of 9.0 feet; therefore, modifications of 7.9 feet and 6.5 feet were requested, respectively.

Mrs. Tyree presented the special permit request as outlined in the statement of justification submitted with the application. She stated that they purchased a free standing garage and received a Notice of Violation due to a neighbor's complaint because they had assumed that the garage was on their property. Mrs. Tyree stated that they hired a surveyor who confirmed that the garage was not on their neighbors' property. She stated that she provided each of their neighbors with a copy of a plat and stated that no one had an issue with the garage remaining. Mrs. Tyree stated that the current location was the only location for the free standing garage and asked for the Board's approval of the application.

Mr. Hammack asked if any setbacks were required for a 36 foot by 14 foot garage prior to purchasing. Mrs. Tyree stated that the reason they purchased the garage was because they had purchased it from a neighbor, who also did not obtain a permit. She stated that at the time of the Notice of Violation, in speaking with County staff, they informed them that the special permit was required due to the way the garage was set on the property line.

Mr. Hammack asked for a clearer explanation of the incline of the yard. Mrs. Tyree submitted photographs showing the yard conditions and the garage in its current location for the Board's review.

Mr. Hart asked if the structure could be shifted on the property line. Mrs. Tyree stated that they had already performed grading on the portion of yard where the garage was currently located. She stated that its current location was the only location for the structure. Mrs. Tyree stated that the garage was prefabricated and on a neighbors' property upon its purchase.

Chairman DiGiulian called for speakers.

Betty McCleary, 5621 Norton Road, Alexandria, Virginia came forward to speak in opposition of the application. Ms. McCleary stated that the plat submitted to the County, showed the garage was on her property by one foot.

Chairman DiGiulian stated that according to the survey the garage was not located on her property and asked if she would like to review a copy of the plat. Mrs. McCleary and Susan Langdon reviewed the plat.

Mrs. McCleary's son (no name given) came forward and stated that he believed that the survey was incorrect and that Tyree's home was not located in the proper location and that Mrs. McCleary wanted to obtain her own survey showing the exact location of the property lines.

Mrs. Tyree stated that she had spoken to Mrs. McCleary at the time that Dominion Surveyors prepared the survey. She stated that she had kept an open communication with her neighbor and asked the Board to approve her request to allow the garage to remain in its current location.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to deny SP 2002-LE-052 as stated in the Resolution.

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~ ~ ~ December 3, 2002, ROBERT E. & PATRICIA T. TYREE, SP 2002-LE-052, continued from Page 94

**COUNTY OF FAIRFAX, VIRGINIA**

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

ROBERT E. & PATRICIA T. TYREE, SP 2002-LE-052 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 2.5 ft. from rear lot line. Located at 5623 Norton Rd. on approx. 7,200 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((13)) 88. 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 3, 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 not met the required standards in sections C, D and G.
3. The building is very long and is closer to the boundary line than what is usually allowed for a variance.
4. A variance request of this nature would not be approved by the Board.
5. Had the applicants contacted Fairfax County prior to installing the garage they would have been informed that it was not legal.
6. The garage is able to be moved to a different location on the property that would not require a variance.
7. Due to the great impact of the garage on the adjacent property, the special permit cannot be approved.

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 6-0. Mr. Hart waived the 12-month waiting period for re-filing. 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 December 11, 2002. This date shall be deemed to be the final decision date of this special permit.

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~ ~ ~ December 3, 2002 (Tape 1) Scheduled case of:

9:00 A.M. RICHARD SHERMAN, VC 2002-DR-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 6445 Sienna Ct. on approx. 13,454 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((14)) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Sherman, 6445 Sienna Court, Falls Church, Virginia, replied that it was.

~ ~ ~ December 3, 2002, RICHARD SHERMAN, VC 2002-DR-138, continued from Page 95

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of a covered patio addition 9.1 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet; therefore, a variance of 2.9 feet was requested.

Mr. Sherman presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot was a corner lot built 35 years prior and that there was currently a 40 foot setback requirement on two sides of the corner lot. He stated that the lot was not large because the house was placed on the rear corner of the corner lot. He stated that condition did not exist on other properties in the neighborhood and that it was also the most narrow lot. Mr. Sherman referred to photographs showing the rear patio and stated that his request was to screen and cover a patio addition. He stated that he had no other options; and therefore, requested the Board's approval of the application. Mr. Sherman referred to other variances approved in the immediate area by the Board for additions to be closer than his request. Mr. Sherman submitted a signed letter by all neighbors in the cul-de-sac supporting the request.

Mr. Sherman stated that a neighbor of 7 years had submitted a letter of rejection to the application and stated that the addition would not be substantially detrimental to her property. He submitted a photograph showing the rear of the yard and a 6 foot privacy fence and a wall of 15 foot evergreen trees. Mr. Sherman stated that there was no view from the neighbor's property to his rear yard. He stated that the only area in their home which had a view was from the 2<sup>nd</sup> floor bathroom window which would have a view of the roof of the addition.

The Board discussed issues of Ordinance requirements with Mr. Sherman and staff because the addition was a ground level addition; however, it would be a covered patio.

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

Mr. Kelley moved to approve VC 2002-DR-138 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD SHERMAN, VC 2002-DR-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 6445 Sienna Ct. on approx. 13,454 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((14)) 22. 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 3, 2002; and

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

1. The applicant is the owner of the land.
2. The variance request is minimal.
3. The applicant's testimony and statement of justification indicated compliance with the required standards for the granting of a variance.
4. The placement of the home on the lot facilitates the need for a variance.

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

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



--- December 3, 2002, RICHARD SHERMAN, VC 2002-DR-138, continued from Page 96

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

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

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

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

1. This variance is approved for the addition as shown on the plat prepared by Bryant L. Robinson, dated August 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 final inspections shall be approved
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 2002. This date shall be deemed to be the final approval date of this variance.

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--- December 3, 2002 (Tape 1) Scheduled case of:

9:00 A.M. MAUREEN M. DUNN, VC 2002-DR-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.4 ft. from side lot line. Located at 1208

~ ~ ~ December 3, 2002, MAUREEN M. DUNN, VC 2002-DR-160 and SP 2002-DR-054, continued from Page 97

Raymond Ave. on approx. 16,482 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 62. (Concurrent with SP 2002-DR-054).

9:00 A.M. MAUREEN M. DUNN, SP 2002-DR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.4 ft. from rear lot line and 5.1 ft. from side lot line and playhouse to remain 8.5 ft. from side lot line. Located at 1208 Raymond Ave. on approx. 16,482 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 62. (Concurrent with VC 2002-DR-160).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maureen Dunn, 1208 Raymond Avenue, McLean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch presented the request as contained in the staff report. Ms. Langdon stated that the applicant requested a special permit to allow a shed to remain 4.4 feet from the rear lot line and 5.1 feet from the side lot line and to permit a play house to remain 8.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; and a minimum rear yard of 9.2 feet for the shed; therefore, modifications of 4.8 feet and 6.9 feet for the shed and 3.5 feet for the play house were requested. The applicant also requested approval of a variance to permit a carport 4.4 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 7.0 feet; therefore, a variance of 2.6 feet was requested.

Ms. Dunn presented the variance and special permit requests as outlined in the statement of justification submitted with the application. She stated that she had purchased the home 20 years prior and had spoken with her neighbors about the carport addition. She stated that the lot was narrow toward the back of the property. She stated that the carport would be the same width of the home currently. Ms. Dunn submitted a letter from the most affected adjacent property owner in support of the request. Ms. Dunn stated that the shed met the standards as outlined by the County; however, due to the back yard sloping, it brought the shed up 1.5 feet which made the shed out of compliance. She stated that they did not realize as much leveling was required which made the shed higher than anticipated. Ms. Dunn said the play house had been built over 8 years ago and was in the back corner of the yard surrounded by white pines. She stated that the neighbors' fence was on their lot line and therefore, the location of the playhouse was closer to the lot line than anticipated.

Mr. Hammack asked if the shed was movable. Ms. Dunn replied that it was on a wooden base, not on concrete.

Mr. Hammack asked how far away was the residence to the rear of the property line. Ms. Dunn replied that she was unsure. Ms. Dunn stated that the placement of the shed was due to water drainage issues and stated that no matter where the shed was located in the rear of the yard, it would have to be elevated.

Mr. Hammack asked if the play house was 11.1 feet tall. Ms. Dunn stated that at the peak of the play house it was; however, the walls were only 8 feet with a peaked roof.

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

Mr. Hammack moved to approve VC 2002-DR-060 and SP 2002-DR-054 as stated in the Resolutions.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MAUREEN M. DUNN, VC 2002-DR-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.4 ft. from side lot line. Located at 1208 Raymond Ave. on approx. 16,482 sq. ft. of

~ ~ ~ December 3, 2002, MAUREEN M. DUNN, VC 2002-DR-160 and SP 2002-DR-054, continued from Page 98

land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 62. (Concurrent with SP 2002-DR-054). 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 3, 2002; and

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

1. The applicant is the owner of the land.
2. The width of the carport is acceptable because it is encumbered by an existing chimney on the outside wall of the existing structure.
3. The proposed location is the only feasible area of the property to construct the carport.
4. The front lot lines of the property converge.
5. The proposed carport meets the criteria for the granting of a variance.
6. The proposed variance will not change the character of the neighborhood.

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

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

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

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

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

~ ~ ~ December 3, 2002, MAUREEN M. DUNN, VC 2002-DR-160 and SP 2002-DR-054, continued from Page 99

- 1. This Variance is approved for the location of a carport as shown on the plat prepared by George M. O'Quinn, dated August 27, 2001, as revised through September 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 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. Kelley seconded the motion, which carried by a vote of 5-1. Mr. Pammel 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 December 11, 2002. This date shall be deemed to be the final approval date of this variance.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

MAUREEN M. DUNN, SP 2002-DR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.4 ft. from rear lot line and 5.1 ft. from side lot line and playhouse to remain 8.5 ft. from side lot line. Located at 1208 Raymond Ave. on approx. 16,482 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 62. (Concurrent with VC 2002-DR-160). 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 3, 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;

~ ~ ~ December 3, 2002, MAUREEN M. DUNN, VC 2002-DR-160 and SP 2002-DR-054, continued from Page 100

- 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 storage structure (shed) and playhouse as shown on the plat prepared by George M. O'Quinn, dated August 27, 2001 as revised through September 12, 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 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 December 11, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 3, 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 and 8/6/02).

Mr. Hart gave a disclosure stating that Mark Busman, the Attorney for the appellant, had a case with his firm; however, the matter would not affect his ability to participate in the hearing.

Chairman DiGiulian noted that there was a letter requesting withdrawal of the applications.

Mr. Pammel made a motion to withdraw the above referenced appeal applications as requested by the agent for the appellant in a letter dated November 26, 2002.

Maggie Stehman, Staff Coordinator, stated that with this motion all six of the appeal applications would be considered withdrawn.

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

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~ ~ ~ December 3, 2002 (Tape 1) After Agenda Item:

Good Shepherd Church  
SP 2002-HM-045

Chairman DiGiulian stated that a letter was received concerning a conflict for the above referenced application.

Mr. Pammel stated that the result of the letter was a request that the Board include in the conditions on the application a condition dealing with the height of the structure, as was proffered by Mr. Lawrence at the public hearing the previous week. He stated that the height had been reduced from 65 feet to 45 feet and moved that the request be included as a condition in the Resolution.

The Board discussed the height issue and questioned whether or not the agent for the applicant had been notified.

Mr. Kelley moved to defer the decision on the request for one week until staff had an opportunity to review the request.

Mr. Pammel agreed and asked for a two-week deferral. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Mr. Pammel asked that staff contact Mr. Lawrence and Ms. Anderson, the requestor.

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~ ~ ~ December 3, 2002 (Tape 1) After Agenda Item:

Approval of November 26, 2002 Resolutions

Mr. Pammel moved to approve the Resolutions, with the exception of SP 2002-HM-045. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Chairman DiGiulian noted an issue with the Thomas Ryan Resolution – VC 2002-LE-142.

Ms. Gibb stated that it was her motion of which there were 4 members of the Board present.

Ms. Gibb stated that she had a difficult time establishing the correct language for a development condition regarding the fence issue. She stated that staff had suggested language of which she moved to adopt staff's requested language as a development condition for this application.

Mr. Kelley seconded the motion, which carried by a vote of 5-0-1. Chairman DiGiulian abstained from the vote. Mr. Ribble was absent from the meeting.

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~ ~ ~ December 3, 2002 (Tapes 1 and 2) After Agenda Item:

Request for Intent to Defer  
Dar Al Hijrah Islamic Center, SPA 84-M-009-2

Mr. Hart asked if a shared parking agreement was not achieved, would that mean that the above referenced application would have to continually be deferred.

Mr. Kelley noted that the application was for an additional use, a school use.

Mr. Hart stated that the Board had not voted because the shared parking issue needed to be resolved.

~ ~ ~ December 3, 2002, AFTER AGENDA ITEMS, continued from Page 102

Mr. Hammack stated that the Board had not heard the application to date and noted that the application would have to be advertised.

Mr. Pammel referred to Ms. Kelsey's letter stating that a hearing would be unnecessary until the parking issue was addressed and therefore, moved to approve a six-month deferral with the understanding that a decision must be made at that time.

Mr. Kelley seconded the motion.

Mr. Hart noted that a hearing had been held on the application several months prior. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the agenda stated that the hearing was deferred for decision only. The Board discussed the issue at length.

Mr. Pammel moved to defer the application to June 10, 2003. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:38 a.m.

Minutes by: Deborah A. Hedrick

Approved on: July 29, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, December 10, 2002. The following Board Members were present: 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.

~ ~ ~ December 10, 2002, (Tape 1) Scheduled case of:

9:00 A.M. RICHARD AND JUDY DELAQUIS, VC 2002-MA-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from rear lot line and deck to remain 3.6 ft. from side lot line. Located at 6363 Levto Landing on approx. 2,310 sq. ft. of land zoned PDH-4. Mason District. Tax Map 72-3 ((33)) (B2) 34.

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.

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 construction of an addition to be located 7.9 feet from the rear lot line and a patio to remain 3.6 feet from the side lot line. The Zoning Ordinance requires a minimum rear yard of 20 feet for the addition and a minimum side yard of 4.8 feet for the patio; therefore, variances of 12.1 feet for the addition and 1.2 feet for the patio were requested.

Mr. Reames presented the variance request as outlined in the statement of justification submitted with the application. He explained that the addition was third level, level with the footprint of the home, and did not extend further than the existing deck. He said the applicants obtained approval from the Homeowner Association and the neighbors were in support of the request.

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

Mr. Hammack moved to approve VC 2002-MA-156 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD AND JUDY DELAQUIS, VC 2002-MA-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from rear lot line and deck to remain 3.6 ft. from side lot line. Located at 6363 Levto Landing on approx. 2,310 sq. ft. of land zoned PDH-4. Mason District. Tax Map 72-3 ((33)) (B2) 34. 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 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 have met the required standards for a variance.
3. An enclosed sunroom at that level is unique.
4. The character of the neighborhood will not be changed by the variance.

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

~ ~ ~ December 10, 2002, RICHARD AND JUDY DELAQUIS, VC 2002-MA-156, continued from Page 105

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 and deck as shown on the plat prepared by George O'Quinn, dated April 30, 2002 and revised through September 9, 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 5-0. Mr. Ribble was not present for the vote. Mr. Pammel was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 10, 2002, (Tape 1) Scheduled case of:

9:00 A.M. SHAISTA & NASR CHAUDHRY, VC 2002-HM-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 2700 Floris La. on approx. 26,239 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 25-1 ((16)) 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. Shaista Chaudhry, 2700 Floris Lane, Oakhill, Virginia, replied that it was.

William Mayland, Staff Coordinator, Rezoning Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to allow a fence greater than 4.0 feet in height to remain in the front yards of a corner lot. The fence would be up to 8.5 feet in height. The Zoning Ordinance permits a maximum of 4.0 feet in height for a fence in a front yard; therefore, a variance of 4.5 feet was requested.

Ms. Chaudhry presented the variance request as outlined in the statement of justification submitted with the application. She said the property along the edge of West Ox Road was very low and a fence of 4.0 feet in height would not offer any security or visual screening; therefore, a higher fence was needed. She stated that the fence was needed to protect her property from vehicular and pedestrian traffic.

Ms. Gibb asked the applicant if she was aware of the opposition letters that her neighbors had submitted. Ms. Chaudhry replied that she was not.

Mr. Hammack asked the applicant if she inquired with the County whether or not she could put a fence that high on the property before she had it constructed. Ms. Chaudhry replied that she had not.

Ms. Gibb asked the applicant if she felt that the fence took away from the appearance of the entrance feature. Ms. Chaudhry stated that it was a personal opinion and that there were no rules regarding this set by the homeowner's association.

Ms. Gibb asked the applicant how long ago the fence was built and asked if there were any complaints by homeowners. Ms. Chaudhry stated that the fence had been built in March and there were no complaints brought to their attention by any homeowners.

Ms. Gibb asked the applicant how it was brought to their attention that they needed to get a variance. Ms. Chaudhry stated that a Fairfax County Inspector left a card on the door indicating that they needed to comply with certain County codes.

Ms. Gibb asked staff if there was ever a complaint made to the County about the fence. Susan Langdon, Chief, Special Permit and Variance Branch, stated that there were no complaints received.

Ms. Gibb asked the applicant if their fence was not on the berm would it need to be as tall. Ms. Chaudhry stated that it would be very expensive to change the fence. She explained that there used to be a smaller fence there before they built the current fence.

Mr. Hart asked staff if the fence was located within the sight distance triangle. Mr. Mayland stated that it was not.

Mr. Hart asked Ms. Chaudhry if there were any other fences of that size in the neighborhood. Ms. Chaudhry stated that there were no other fences of that size in the neighborhood.

Mr. Kelley asked the applicant who built the fence. Mr. Chaudhry stated that it was a subcontractor that had built another fence in the neighborhood.

Chairman DiGiulian called for speakers.

Pam Marsters, 13406 Alfred Mill Court, came forward to speak in opposition of the application. She explained that the fence was an eyesore. She stated that the homeowner's association met and everyone agreed that the fence should be removed and that action needed to be taken with the County. She asked the Board to make the current law of 4.0 feet stand and requested that the Board not grant a variance.

~ ~ ~ December 10, 2002, SHAISTA & NASR CHAUDHRY, VC 2002-HM-155, continued from Page 107

Mr. Kelly asked the speaker if she was a member of the homeowner's association. Ms. Marsters stated that she was not a member.

Mr. Kelly asked the speaker if she was aware of the applicant's statement that the homeowner's association rules were recently drafted. Ms. Marsters stated that she was not.

Steve Marsters, 13406 Alfred Mill Court, came forward to speak in opposition of the application. He explained that when the neighborhood was built it was open and had a welcoming entrance. He said that sound barriers were put in place on both ends of the neighborhood which consisted of earthen berms. He explained that a neighbor at a similar entrance to the neighborhood built a 4.0 foot fence on the berm and had landscaped to continue the welcoming affect of the neighborhood. Mr. Marsters stated that the fence built at the Floris Lane entrance was so large in size that it completely blocked all views into the neighborhood. He explained that there was a security force employed in the neighborhood to take care of such problems as trespassing, trash, and illegal parking. He stated that before the fence was built the Chaudhrys did not inform any of the neighbors or appropriate county employees about the fence.

Mr. Kelley asked the speaker if he was aware that the homeowner's association rules were recently drafted. Mr. Marsters stated that there were rules in place since 1991 but they were recently revised.

Mr. Kelley asked the speaker if the revised homeowner's association rules were in place when the fence was constructed. Mr. Marsters stated that they were not.

Mr. Hammack asked the speaker if the earlier covenants restricted the height of the fence to 4.0 feet. Mr. Marsters stated that he was not sure if there were restrictions on height requirements.

Ms. Chaudhry stated, in her rebuttal, that if the homeowners wanted to discuss matters concerning the fence they could have come to them. She stated that she was asked to sign a document stating that anything in existence on the property came under a grandfather clause.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision for approximately one month. He explained that at least one Board member wanted to inspect the site. Mr. Hart said that the deferral would allow more time for neighbors to submit more material in writing.

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

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

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

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~ ~ ~ December 10, 2002, (Tape 1) Scheduled case of:

9:00 A.M. LINDA K. SCHLAITZER AND JANICE M. TYREE, TRUSTEES FOR THE BERNADINE R. MELVIN TRUST, VC 2002-MA-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 3 lots with proposed Lots 2 and 3 having lot widths of 0.0 ft.

~ ~ ~ December 10, 2002, LINDA K. SCHLAITZER AND JANICE M. TYREE, TRUSTEES FOR THE BERNADINE R. MELVIN TRUST, VC 2002-MA-124, continued from Page 108

Located at 4921 Sunset La. on approx. 2.88 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 2. (Admin moved from 11/5/02)

This case was administratively moved to February 4, 2003, at 9:00 a.m., per the applicants' request.

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~ ~ ~ December 10, 2002, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF THE KINGS CHAPEL, SP 2002-SP-051 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a new church with a child care center and nursery school. Located at 12925 Braddock Rd. and 5712 Doyle Rd. on approx. 10.12 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 2 and 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 McBride, Agent, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the request as contained in the staff report. The property consists of 10.12 acres, on the south side of Braddock Road and is zoned R-C and is within the Water Supply Protection Overlay District. The applicant requested a special permit to permit construction of a 40,000 square foot 800 seat church at an FAR of .09 with a childcare center/nursery school with a maximum daily enrollment of 60 children. Ms. Josiah stated that the applicant had submitted revised development conditions and that staff did not support the revisions. The applicant submitted revised conditions to modify numbers 8, 12, 15, 16, 18, 19, and 22, which staff did not support.

Mr. Hart asked if the impervious surface of the site was more than 18%. Ms. Josiah replied yes.

Mr. McBride presented the request as outlined in the statement of justification submitted with the application. He explained that he had a petition with 85 signatures of Fairfax County residents in support for the application. He stated that Braddock Road offered good access and is a primary arterial. He stated that the applicant exceeded the Ordinance requirement for FAR. He stated that they also met the tree save policy by the Board of Supervisors. He explained that BMPs and detention would be provided for the property. He said that DPWES felt that the dry pond storm water management would provide BMPs and would reduce current flow onto the Dayharsh property. He said that they were orienting their buildings toward Braddock Road and there was significant tree save on the site. Mr. McBride stated that they were asking for a modification of transitional screening on the front so they could save the tree save area and plant the underlying hedge row with more trees. He said the neighborhood across from the church had a high berm with large white pines and the church was not visible from the neighborhood. He explained that they had met with the Dayharshes and revised their plat to properly reflect their fence.

Ms. Gibb asked staff if they could comment on Mr. McBride's request with respect to Development Condition 12. She asked if there was any way that the screening would be better or more effective if the language he suggested was used. Ms. Josiah replied that they did not feel that the language proposed precluded the preservation of trees along the front lot line. She said they would rather have Transitional Screening 1 instead of the hedge row that was proposed.

Ms. Gibb asked staff what was Transitional Screening 1. Ms. Josiah stated that it was a width of 25.0 feet interspersed with evergreen and deciduous trees.

Ms. Gibb asked staff what was a hedge row. Ms. Josiah stated that it was small shrubbery and did not provide the visual screening they would like.

Mr. Hart asked if staff knew where the Resource Protection Area began towards the south. Ms. Josiah stated that it was offsite.

Mr. Hart asked staff if the wetlands area was below the storm water pond. Staff stated that it was.

The Board discussed the applicant's proposed changes to the development conditions.

~ ~ ~ December 10, 2002, TRUSTEES OF THE KINGS CHAPEL, SP 2002-SP-051, continued from Page 109

Mr. Hart asked Mr. McBride if they were going to use a pervious material for the parking lot. Mr. McBride stated that they have not decided yet, and that it was costly.

Mr. Hart asked the applicant about providing a wood fence between the church and the Doan house. Mr. McBride agreed to provide one.

Mr. Hart asked Mr. McBride if he knew which property was the Rood property. Mr. McBride stated that it was one lot away, Lot 14.

Mr. Hammack stated that Mr. Robson wrote a letter to the Koehnes on Lot 13 about the County requiring an easement in order to accomplish improvements of a ditch. Mr. McBride stated that he was not sure that was the case and that they were anticipating what would be required for their entrance onto Doyle Road. He explained that if so, it would be a drainage or a temporary construction easement because Doyle was an open ditch section roadway.

Mr. McBride stated that he thought the letter was of a very old date and that it was when they were looking at storm water management alternatives.

Chairman DiGiulian called for speakers.

Bob Richards, 5933 Doyle Road; Carol Koehne, Lot 13; and Deborah Rood, 5728 Doyle Road; came forward to speak in opposition of the application. They expressed concerns relating to drainage issues, the proposed use being inappropriate for the area, an increase in traffic, the poor condition of Doyle Road so that the school busses could not even come down the road, and parking.

Mr. McBride stated, in his rebuttal, that the two parcels can be developed as single family dwellings with no BMPs required, and no fifty percent undisturbed open area. He explained that the application meets every county site plan requirement, and they are not going to be requesting any modifications or waivers to any environmental requirements. He stated that they are going to provide BMPs, and they were exceeding the detention requirement so the amount of water that flowed to the south is less than it currently is. He said that they were doing a wetlands study and they would mitigate any impact to the wetlands. He said that the letter from Mr. Robson was when they were previously evaluating storm water management detention and where the water would go. He said that an option was having the water flow down the Doyle Road ditch; however, they decided not to pursue that option. He said that the problem with the school buses was the lack of a turn around on the road.

Ms. Gibb asked the applicant where the fence would be constructed. Mr. McBride stated that it would be on the eastern boundary line.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2002-SP-051 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

TRUSTEES OF THE KINGS CHAPEL, SP 2002-SP-051 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a new church with a child care center and nursery school. Located at 12925 Braddock Rd. and 5712 Doyle Rd. on approx. 10.12 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 2 and 16. 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

~ ~ ~ December 10, 2002, TRUSTEES OF THE KINGS CHAPEL, SP 2002-SP-051, continued from Page 110

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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 requirements 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-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, 12925 Braddock Road and 5712 Doyle Road (10.12 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 Robson Group Architects dated July 29, 2002, as revised through November 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. 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 450 upon completion of Phase I and 800 upon completion of Phase II.
6. The total combined maximum daily enrollment for the nursery school and child care center shall be 60 children.
7. The maximum hours of operation for the nursery school and child care center shall be from 6:45 a.m. to 6:45 p.m., Monday through Friday.
8. A minimum of 50% of the site shall be preserved as undisturbed open space.
9. Parking shall be provided in the areas shown on the Special Permit Amendment Plat. All parking for the church shall be on site.
10. The design of the church shall be consistent with the architectural renderings included as Attachment 1 to the special permit conditions.
11. An outdoor play area, a maximum of 3,172 square feet in size, shall be provided as shown on the special permit plat.
12. Transitional Screening 1 shall be provided along the eastern lot line and the Northern lot line of Lot 16 north of the driveway.

Existing vegetation shall be used to meet Transitional Screening requirements along the southern and western lot lines, except supplemental vegetation shall be provided along the western lot line if deemed necessary to meet Transitional Screening 1 as determined by the Urban Forestry Division.

Notwithstanding what is shown on the special permit plat, Transitional Screening 1 shall be provided along the northern lot line.

13. The barrier requirement shall be waived along all lot lines, except as noted in Condition 23.
14. The applicant shall provide 15 feet of right of way dedication from the existing southern right-of-way line of Braddock Road in fee simple to the Board of Supervisors at the time of site plan approval or upon demand, whichever occurs first.
15. Stormwater Management (SWM) and Best Management Practices (BMP) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Public Works and Environmental Services (DPWES). No clearing and grading for the SWM pond shall be allowed outside the limits of clearing as depicted on the special permit plat. If the SWM pond is waived or reduced in size, the area approved for the pond shall become part of the perpetually undisturbed open space on site. If topographic and hydrologic conditions allow, as determined by DPWES, vegetation should be retained within the pond area of the proposed facility, possibly as "embankment-only" designs.
16. A tree preservation and planting plan shall be submitted to the Urban Forestry Division, DPWES for review and approval at the time of site plan review and shall be implemented. This plan shall depict the limits of clearing no less than as delineated on the special permit plat and shall provide for the preservation of all areas shown on the plat outside the limits of clearing to be preserved and labeled as "perpetually undisturbed open space" as well as the existing vegetation shown on the approved special permit plat. The planting plan shall include parking lot and peripheral parking lot landscaping as required by Article 13 of the Zoning Ordinance.
17. All signs on the property shall conform to the provisions of Article 12 and a sign permit shall be obtained for any sign.
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 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.
19. Prior to site plan approval, a wetlands study shall be submitted to DPWES in order to determine the presence of wetlands in the southern portion of the site. In the event Non-Tidal Wetlands are disturbed to accommodate the proposed site layout, the applicant shall demonstrate to the satisfaction of DPWES compliance with Sect. 404 of the Clean Water Act.
20. Prior to site plan approval, it shall be demonstrated to the satisfaction of DPWES that the site can be served by public sewer pursuant to the 400 Foot Rule as determined by DPWES. If the layout shown on the special permit plat cannot be provided sewer service pursuant to that rule, the plan shall be modified so that sewer service can be provided pursuant to the 400 Foot Rule, provided such modification is in substantial conformance with the special permit plat and these conditions. If such changes are not in substantial conformance with the special permit plat and these conditions,



~ ~ ~ December 10, 2002, TRUSTEES OF THE KINGS CHAPEL, SP 2002-SP-051, continued from Page 112

an amendment to this special permit shall be required. In no instance shall a request be made to expand the approved sewer service area (Little Rocky S-1) to accommodate this use.

21. If DPWES, in coordination with the Air Quality and Chemical Hazards Section of the Health Department and with the Soil Science Office, determine that a potential health risk exists caused by the presence of rock containing asbestos on the site, the applicant shall:
- Take appropriate measures as determined by the Health Department to alert all construction personnel to the potential health risk.
  - Commit to appropriate construction techniques as determined by DPWES, in coordination with the Air Pollution Control Division and with the Soil Science Office, to minimize the risk. Such techniques may include, but are not limited to, dust suppression measures during all blasting and drilling activities, covered transportation of removed material presenting the risk and appropriate disposal.
22. Any proposed lighting on the site shall be in accordance with the following:
- Outside lights shall be limited to parking lot lighting which shall only be of the low bollard type of lighting fixtures no more than three (3) feet in height.
  - The lights shall be of a design which focuses the light directly onto the subject property and does not create a nuisance or a glare off the property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the subject property.
  - 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 the proposed building or sign.
23. A board on board fence shall be provided within the transitional screening area along the eastern lot line. The fence shall be provided in the area between Braddock Road and the southeastern corner of the church structure.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2002. This date shall be deemed to be the final approval date of this special permit.

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--- December 10, 2002, (Tape 1) Scheduled case of:

9:00 A.M. HERBERT AND STACY D. HOPWOOD, VC 2002-HM-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. from front lot line. Located at 1699 Drewlaine Dr. on approx. 30,907 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-4 ((1)) 27A and 28-4 ((34)) H.

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, Land Design Consultant, Inc., 8569-E Sudley Road, Manassas, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. The applicant requested a variance to permit construction of a 2-story addition 25.0 feet from the front lot line of a corner lot. A minimum front yard of 35.0 feet is required; therefore, a variance of 10.0 feet was requested.

Ms. Kroll presented the variance request as outlined in the statement of justification submitted with the application. She stated that the addition was for an expansion of the applicant's living area for their children. She stated that the home was at an angle on the lot. Ms. Kroll explained that the property was constricted by a 30.0 foot pipestem driveway easement and the associate 25.0 foot setback from the edge of the driveway. She said a sanitary sewer easement existed within 10.0 feet of the front of the house. She stated that there was an oak tree that restricted the construction of the addition on the rear of the property. Ms. Kroll said that the house was located 70.0 feet from the rear property line where only a 25.0 foot setback was required and was located 36.0 feet from the northern lot line where a 15.0 foot side yard was required. She stated that the addition would compliment the character of the house and the neighborhood by adding a symmetrical balance to the house's elevation. Ms. Kroll explained that the Hopwood's had planted evergreens and deciduous trees to help shield their neighbors' view from the opposite side of the road. She said that she submitted a copy of a petition signed by all of the affected neighbors in support of the application. Ms. Kroll said that the applicant believed they had met all nine standards for a variance. She explained that because of easements and tree preservation, the addition could only be constructed in the proposed location.

Mr. Hart asked the applicant why outlot H was part of the application. She stated that it was not technically part of the application but was owned by the Hopwoods.

Mr. Hart asked if staff could explain why Lot H was part of the application. Ms. Langdon stated that the application form included both lots.

Ms. Kroll stated that in order to file the application they needed to include both Lots 27A and Lot H.

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

Mr. Ribble approved VC 2002-HM-152 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

HERBERT AND STACY D. HOPWOOD, VC 2002-HM-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. from front lot line. Located at 1699 Drewlaine Dr. on approx. 30,907 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-4 ((1)) 27A and 28-4 ((34)) H. 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 10, 2002; and

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

~ ~ ~ December 10, 2002, HERBERT AND STACY D. HOPWOOD, VC 2002-HM-152, continued from Page 114

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.
3. The variance is needed because of the way the house is located on the lot and for other reasons as stated by the applicant.

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

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

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

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

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

1. This variance is approved for the location of a two-story addition as shown on the plat prepared by Charles E. Powell, dated, August, 2002, revised through September 18, 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.

~ ~ ~ December 10, 2002, HERBERT AND STACY D. HOPWOOD, VC 2002-HM-152, continued from Page 115

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 18, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 10, 2002, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF THE ST. JOHN'S LUTHERAN CHURCH, SPA 85-L-050 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-L-050 previously approved for a church and child care center to permit building additions, increase in enrollment, site modifications and change in development conditions. Located at 5952 Franconia Rd. on approx. 3.78 ac. of land zoned R-3 and HC. Lee District. Tax Map 81-4 ((1)) 15.

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

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. The applicant requested a special permit amendment for a previously approved church with a childcare center to permit site modifications and building additions. The applicant proposed to demolish the existing fellowship hall, rebuild the fellowship hall and to expand the current building from 18,730 square feet. At build-out the structure was proposed to be 25,000 square feet. An additional 37 parking spaces were proposed along the northwest portion of the site for a total of 143 spaces. The applicant also proposed increasing the enrollment of the childcare center from 50 children to 90 children and increasing the hours of operation. Staff indicated that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance.

Mr. McBride presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained that he had a petition signed by 203 County residents, primarily members of the church, who supported the application. He stated that there were signatures on the petition from two of the abutting neighbors. Mr. McBride stated that the homeowner's association had a cut-through traffic problem and they agreed to notify the contractors so construction did not become an additional problem. He explained that the application was for a modernization which would provide a more usable facility, ADA accessibility, and more parking. Mr. McBride stated that the property did not have onsite detention and they proposed to install a BMP facility on the site under the parking lot. He said that the childcare facility was a very popular program for that area and that a large number of children were bussed from two of the local Fairfax County elementary schools.

Chairman DiGiulian called for speakers.

Paul Karlsson, 6107 Tammy Drive, came forward to speak in opposition of the application. He explained that the Civic Association had no idea what the church had been planning until receipt of the notice. He explained that the association was concerned about the value of their homes. He said that the neighbors were concerned about the length of time the construction would take and how it would affect their lives. Mr. Karlsson said that he was concerned about the loss of trees, which was a buffer from their homes to the church parking lot. He explained that there was a dumpster less than 150 yards from his house which was emptied during early morning hours and was causing a disturbance. He said there was prerecorded music played several times a day and noise from the parking lot at all hours of the night.

Leslie Sedgwick, owner of lots 2 and 3 behind St. John's Church, came forward to speak in opposition to the application. She explained that the church's childcare center already had a traffic problem. She said the current barrier for sound was not large enough. Ms. Sedgwick said the current parking lot should be large enough and that people were not using the available parking spaces. She stated that the area was full of natural springs and that she was concerned that the underground detention could cause flooding. She explained that when a previous addition was constructed it caused flooding in her basement. Ms. Sedgwick stated that if the natural springs were flooded it could increase the West Nile Virus cases. She said that over

~ ~ ~ December 10, 2002, TRUSTEES OF THE ST. JOHN'S LUTHERAN CHURCH, SPA 85-L-050,  
continued from Page 116

90 percent of the people who signed the petition did not live in the same postal zone as the church and would not be directly affected.

Mr. Hammack asked Ms. Sedgwick if anyone had ever brought the parking or noise problems to the County's attention. She stated that she went to the County and nothing was done.

Mr. Hammack stated that there was a waiver of the barrier requirements in a past BZA hearing.

Mr. McBride stated, in his rebuttal, that the construction would only be a 12 month process. He said that the tree save will remain and the sanctuary would not be expanded. He stated that the church paid water and sewer just like the homeowners. Mr. McBride said the facility would have to accommodate any underground issues or problems and would also make sure that the sanitary sewer lines were large enough.

Mr. Ribble asked the applicant what his knowledge of the parking situation was with people parking on the road. Mr. McBride stated that they were adding more parking and there were other problems with parking in nearby neighborhoods that contribute to the parking on the road.

Mr. Hart asked staff if the development conditions required all parking to be on site was currently being added. Ms. Langdon stated that was correct.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SPA 85-L-050 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE ST. JOHN'S LUTHERAN CHURCH, SPA 85-L-050 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-L-050 previously approved for a church and child care center to permit building additions, increase in enrollment, site modifications and change in development conditions. Located at 5952 Franconia Rd. on approx. 3.78 ac. of land zoned R-3 and HC. Lee District. Tax Map 81-4 ((1)) 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 December 10, 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, 5952 Franconia Road (3.78 acres), and is not transferable to other land.

~ ~ ~ December 10, 2002, TRUSTEES OF THE ST. JOHN'S LUTHERAN CHURCH, SPA 85-L-050,  
continued from Page 117

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 July 23, 2002, as revised through November 7, 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 a new Non-RUP, the hours of operation for the child care center shall not exceed 6:45 a.m. to 6:45 p.m., Monday through Friday.
6. Upon approval of a new Non-RUP, the maximum daily enrollment of the child care center shall be 90 children.
7. There shall be a maximum of 400 seats in the main worship area.
8. Parking shall be provided as shown on the special permit plat. All parking shall be on-site.
9. Right of way of 30 feet along St. John Drive from Goldenrod Drive north to the end of property shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval, or upon demand, whichever occurs first.
10. Transitional Screening 1 shall be provided along the northern lot line with the existing vegetation supplemented to meet the transitional screening requirements.

Transitional Screening requirements shall be modified along the eastern, southern and western lot lines in favor of existing vegetation and shall be supplemented with evergreen and flowering trees as shown on the special permit amendment plat.

Foundation plantings shall be provided primarily along the eastern, western and southern sides of the building to soften the appearance of the building. All vegetation shall be to the satisfaction of the Urban Forester. 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. However, a 5 foot high board on board fence shall be provided along the perimeter of the play area.
12. Stormwater/Best Management Practices (BMP) shall be provided as determined by the Department of Public Works and Environmental Services (DPWES). No additional vegetation or modification of transitional screening shall be permitted to accommodate a facility.
13. The limits of clearing and grading shall be no greater than as shown on the special permit plat and shall be strictly adhered to.
14. 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.

~ ~ ~ December 10, 2002, TRUSTEES OF THE ST. JOHN'S LUTHERAN CHURCH, SPA 85-L-050, continued from Page 118

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

Ms. Gibb 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 18, 2002. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ December 10, 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 and 7/2/02)

Mr. Hammack moved to defer SPA 84-M-009, Dar-Al-Hijrah Islamic Center, Inc. to June 10, 2003, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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~ ~ ~ December 10, 2002, (Tape 1) Scheduled case of:

9:00 A.M. JOHN P. AND RACHEL N. BENNER, VC 2002-MA-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot B2 having a lot width of 80.0 ft. Located at 5219 Monroe Dr. on approx. 1.05 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((6)) B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit the subdivision of the application parcel into two lots with lot B2 having a lot width of 80.0 feet. The minimum lot width of 100 feet is required by the Ordinance; therefore, a

~ ~ ~ December 10, 2002, JOHN P. AND RACHEL N. BENNER, VC 2002-MA-150, continued from Page 119

variance of 20.0 feet was requested. Lot B2 was proposed to be developed with a single family detached dwelling. Staff believed that the application did not meet Variance Standards 2-9 of the Zoning Ordinance.

Mr. Martin presented the variance request as outlined in the statement of justification submitted with the application. He explained that Mr. and Mrs. Benner's mother and father previously requested the same variance and it had been approved. He stated that Mr. Benner thereafter passed away and the subdivision of the lots was never done. He stated that the Benners wanted to reinstitute the variance that was approved in 1991. Mr. McBride said they met certain issues concerning tree preservation that was not on the original variance. He said there was a development condition that had been agreed upon. Mr. McBride said they agreed to buyer retention on the lots. He stated that Department of Public Works and Environmental Services (DPWES) wanted to place drainage improvements on the rear of the lot and that the Benners would comply with that. Mr. McBride said they met the required criteria for a variance. He said the lot was the largest in the subdivision he said the property was purchased in good faith and many lots in the subdivision had been subdivided. Mr. McBride said there were five lots in the subdivision that were equal or smaller than the proposed lots in the variance. He said there were no neighbors in opposition to the variance.

Mr. Hart asked the applicant if the building in the back of the smaller lot would be removed. Mr. Martin stated that it would.

Mr. Hart asked the applicant what type of pond was on the property. Mr. Benner explained that it was an ornamental pond.

Mr. Hart asked Mr. Martin to explain the extraordinary condition. Mr. Martin explained that the lot was the largest in the subdivision and that the property had been previously approved for an identical variance.

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

Mr. Hammack stated that he did not support the previous application in 1991. He said there were other fairly large lots in the subdivision that were comparable in size to the lot needing a variance. Mr. Hammack said allowing a variance on the lot would set a bad precedence to the whole community. Mr. Hammack moved to deny VC 2002-MA-150.

Mr. Hart stated that he agreed with Mr. Hammack. He stated that the lot was not remarkable and was very similar to other lots on the same street. He said he did not believe that standard number five of the Zoning Ordinance would be met. The motion failed by a vote of 2-4. Chairman DiGiulian, Ms. Gibb, Mr. Kelley, and Mr. Ribble voted against the motion. Mr. Pammel was absent from the meeting.

Ms. Gibb moved to approve VC 2002-MA-150 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. AND RACHEL N. BENNER, VC 2002-MA-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot B2 having a lot width of 80.0 ft. Located at 5219 Monroe Dr. on approx. 1.05 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((6)) B. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution: 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 10, 2002; and

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



-- December 10, 2002, JOHN P. AND RACHEL N. BENNER, VC 2002-MA-150, continued from Page 120

1. The applicants are the owners of the land.
2. The size of the lot is large compared to other lots in the subdivision.
3. A variance was previously granted on the property and the circumstances have not 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 subdivision of Lot B as shown on the plat prepared by Huntley, Nyce & Associates, Ltd., dated June 25, 2002, as revised through November 8, 2002 and signed November 11, 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 existing house on Lot B-1 may remain or be replaced.
3. Prior to approval of an overlot grading plan for the property, a tree preservation plan showing final limits of clearing and grading shall be approved by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES). The tree preservation plan shall preserve as much of the existing tree canopy as possible as determined by the Urban Forester and shall meet the tree cover requirements of the Zoning Ordinance.
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 of construction shall

be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forestry Division, 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. 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. 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.

- 5. 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 approved by DPWES. If rain gardens are provided on-site, Attachment A shall be implemented to address proper maintenance procedures.

Pursuant 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 and 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.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 10, 2002, (Tape 1) Scheduled case of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2.

This case was administratively moved to February 4, 2003, at 9:00 a.m.

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~ ~ ~ December 10, 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 and 10/29/02)

Susan Epstein, Department of Planning and Zoning, Zoning Administration Division, stated that the appeal pertained to an April 10, 2002, Notice of Violation which cited the appellant for operating a contractor's office and shop in the C-8 District without a valid Non Residential Use Permit (Non-RUP) or site plan approval in violation of Zoning Ordinance Provisions. She explained that the October 29, 2002, public hearing was deferred to allow staff time to examine the submitted affidavits regarding potential nonconforming rights to

~ ~ ~ December 10, 2002, E.P. MOWING & LANDSCAPING, INC., A 2002-MV-013, continued from Page 122

operate the contractor's office and shop without site plan approval. Ms. Epstein said after considering the affidavits and pursuant to a November 13, 2002, public hearing with the appellant's representative, staff concurred that the contractor's office and shop had been operating continuously on the property prior to 1959. She stated that when staff performed an inspection on December 4, 2002, additional structures on the property were observed along the rear of the property that were not located on the 1963 house location survey for the property. Ms. Epstein noted that staff and the appellant had agreed to a deferral.

Mr. Hart moved to defer A 2002-MV-013 to January 7, 2003, at 9:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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~ ~ ~ December 10, 2002, (Tape 1) After Agenda Item:

Request for Reconsideration  
Kevin and Ann Mahoney  
VC 2002-DR-151

Chairman DiGiulian stated that the Request for Reconsideration was denied for lack of a motion.

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~ ~ ~ December 10, 2002, (Tape 1) After Agenda Item:

Approval of December 3, 2002 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Hart seconded the motion, which carried by a vote 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 12:20 p.m.

Minutes by: Alison Capo

Approved on: September 9, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, December 17, 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.

Mr. Kelley moved to waive the 8-day waiting period for all approved applications. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote, and Mr. Ribble was absent from the meeting.

There were no further Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M.      PATRICK J. FOLEY, VC 2002-PR-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 8004 Woodcroft Ct. on approx. 10,509 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((25)) 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. Patrick Foley, 8004 Woodcroft Court, Dunn Loring, Virginia, replied that it was.

Fran Burnsynzki, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 15 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10 feet was requested.

Mr. Foley presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested because his family needed more living space. Mr. Foley stated that the addition would back up to open space in the rear and it was unlikely the open space would ever be developed. He said a neighbor built a similar addition.

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

Mr. Pammel moved to approve VC 2002-PR-153 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK J. FOLEY, VC 2002-PR-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 8004 Woodcroft Ct. on approx. 10,509 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((25)) 2. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 17, 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 shallow and only 105 in depth on the perpendicular side to Woodcroft Court.
3. The applicant's justification indicated that Iliff Drive was unimproved and there were not future prospects of it being improved.

~ ~ ~ December 17, 2002, PATRICK J. FOLEY, VC 2002-PR-153, continued from Page 125

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Victor Montes, Architect, dated July 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 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. Hart seconded the motion, which carried by a vote of 5-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, and Mr. Ribble was absent from the meeting.

~ ~ ~ December 17, 2002, PATRICK J. FOLEY, VC 2002-PR-153, continued from Page 126

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. QUANG VAN LE AND LAURA LE, VC 2002-SU-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.9 ft. from rear lot line. Located at 13595 Brewerton Ct. on approx. 9,401 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((15)) 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. Quang and Laura Le, 13595 Brewerton Court, Chantilly, 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 18.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6.1 feet was requested.

Mr. Le presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to add a screened porch on an existing deck to allow them to be able to enjoy the yard without mosquitoes.

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

Mr. Hart moved to approve VC 2002-SU-166 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

QUANG VAN LE AND LAURA LE, VC 2002-SU-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.9 ft. from rear lot line. Located at 13595 Brewerton Ct. on approx. 9,401 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((15)) 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 December 17, 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 unusually shaped and an example of a P District lot with a large house on it placed with very little room for any additions.
4. The lot is heavily impacted by an ingress/egress easement, a water line easement, a storm drainage easement and a telephone and electrical pedestal.
5. The screen porch is on top of an existing deck and the way it is placed it is not near any other structures and backs to open space and a stream valley.
6. There would not be any negative impacts on adjacent property owners.
7. The addition is smaller than the existing deck and further mitigates impact because of that.

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

~ ~ ~ December 17, 2002, QUANG VAN LE AND LAURA LE, VC 2002-SU-166, continued from Page 127

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Jarrett Surveys, Inc., dated July 5, 2002, as revised through September 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.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. VICTOR K. LIM, JR., VC 2002-DR-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line and 6.5 ft. from rear lot line and accessory structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 7024 Statendam Ct. on approx. 10,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-1 ((12)) 180.

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 Lim, 7024 Statendam Court, 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 accessory structure 3.0 feet from the side lot line and 6.5 feet from the rear lot line and an accessory structure (a trellis) to remain in the front yard of a lot containing 36,000 square feet or less. A minimum rear and minimum side yard of 12 feet is required; therefore, variances of 9.0 feet and 5.5 feet were requested respectively.

Mr. Lim presented the variance request as outlined in the statement of justification submitted with the application. He said the garage was needed to provide security of his vehicles and to provide a storage place for yard equipment. Mr. Lim stated that there had been vandalism in the area.

Mr. Pammel asked if the garage could be moved further into the property by 2 feet. Mr. Lim replied that it could be moved but it would require the removal of vegetation.

Mr. Hart asked if the 2-car garage was side by side spaces. Mr. Lim replied yes.

Ms. Gibb asked how the applicant would get to the garage if there was a trellis there. Mr. Lim replied that there was an existing driveway under the trellis.

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

Ms. Gibb moved to approve VC 2002-DR-163 for the reasons noted in the Resolution. She moved to approve the accessory structure 4 feet from the side lot line. Mr. Kelley seconded the motion, which failed by a vote 3-2. Mr. Hart and Mr. Pammel voted against the motion. Mr. Hammack was not present for the vote, and Mr. Ribble was absent from the meeting.

Mr. Pammel moved to approve in part VC 2002-DR-163 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VICTOR K. LIM, JR., VC 2002-DR-163 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 TO BE 5.0 FEET FROM THE SIDE LOT LINE)** and 6.5 ft. from rear lot line and accessory structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 7024 Statendam Ct. on approx. 10,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-1 ((12)) 180. 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 17, 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 and shallow.

~ ~ ~ December 17, 2002, VICTOR K. LIM, JR., VC 2002-DR-163, continued from Page 129

3. The garage is placed in the only feasible location to avoid removing existing trees.
4. An 8 foot high fence is adjacent to the proposed structure and a shed is located on the neighbor's property in close proximity.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 detached garage and trellis shown on the plat prepared by David Hagen, dated January 30, 2002, as revised through July 15, 2002, submitted with this application and is not transferable to other land. However, notwithstanding what is shown on the plat, the wall of the detached garage shall be located 5.0 feet from the side lot line.
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.

~ ~ ~ December 17, 2002, VICTOR K. LIM, JR., VC 2002-DR-163, continued from Page 130

Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M.       BAHRAM SHAHRIARI, VC 2002-PR-159 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 2000 Woodford Rd. on approx. 24,416 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((1)) 43.

Chairman DiGiulian noted that VC 2002-PR-159 had been administratively moved to February 4, 2002.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M.       STEVEN PRESING, VC 2002-BR-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 13.7 ft. from front lot line. Located at 5299 Windsor Hills Dr. on approx. 15,975 sq. ft. of land zoned R-3. Braddock District. Tax Map 68-4 ((21)) 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. Steven Presing, 5299 Windsor Hills Drive, Fairfax, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck 13.7 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 16.3 feet was requested.

Mr. Presing presented the variance request as outlined in the statement of justification submitted with the application. He said the majority of the lot was unusable because of easements and it was a reverse frontage lot.

Mr. Hart asked if Zion Drive would be widened. Susan Langdon, Chief, Special Permit and Variance Branch, said she did not believe it would be widened.

Mr. Presing stated that he had checked the Comprehensive Plan and there were no plans for Zion Drive to be widened.

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

Mr. Kelley moved to approve VC 2002-BR-165 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN PRESING, VC 2002-BR-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 13.7 ft. from front lot line. Located at 5299 Windsor Hills Dr. on approx. 15,975 sq. ft. of land zoned R-3. Braddock District. Tax Map 68-4 ((21)) 1. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ December 17, 2002, STEVEN PRESING, VC 2002-BR-165, continued from Page 131

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 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's statement of justification and testimony indicates compliance with the required standards for a variance.
3. There are several easements on the property.
4. 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 deck shown on the plat prepared by BC Consultants, dated September 19, 2002, as revised through September 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.

~ ~ ~ December 17, 2002, STEVEN PRESING, VC 2002-BR-165, continued from Page 132

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. CLAUDIA MARGAIN BROWN, VC 2002-PR-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in the front yard and an accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 2352 Cedar La. on approx. 25,018 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((1)) 34C. (Concurrent with SP 2002-PR-55).

9:00 A.M. CLAUDIA MARGAIN BROWN, SP 2002-PR-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 7.8 ft. and 8.3 ft. from side lot lines. Located at 2352 Cedar La. on approx. 25,018 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((1)) 34C. (Concurrent with VC 2002-PR-161).

Chairman DiGiulian noted that VC 2002-PR-161 and SP 2002-PR-055 had been administratively moved to February 11, 2003.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL H. & THERESA A. SHERMAN, VC 2002-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 11.1 ft. and 17.8 ft. and addition 17.1 ft. and 17.8 ft. from side lot lines. Located at 3004 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 66.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Sherman, 3004 Fairhill Road, Fairfax, 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. The applicant requested a variance to permit the construction of a roofed deck 11.1 feet and 17.8 feet from the side lot lines and an addition 17.1 feet and 17.8 feet from the side lot lines. A minimum side yard of 20 feet is required; therefore, variances of 8.9 feet, 2.2 feet, 2.9 feet, and 2.2 feet were requested respectively.

Mr. Sherman presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was needed to provide more living space. He said the neighbors were in support of the application.

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

Mr. Pammel moved to approve VC 2002-PR-157 for the reasons noted in the Resolution.

~ ~ ~ December 17, 2002, MICHAEL H. & THERESA A. SHERMAN, VC 2002-PR-157, continued from Page 133

**COUNTY OF FAIRFAX, VIRGINIA**

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

MICHAEL H. & THERESA A. SHERMAN, VC 2002-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 11.1 ft. and 17.8 ft. and addition 17.1 ft. and 17.8 ft. from side lot lines. Located at 3004 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 66. 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 17, 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 narrow, measuring only 60 feet in width.
3. The additions do not extend further into the side lot lines than the current dwelling.
4. The only extension further into the side yard is the roofed deck.

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

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

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

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

~ ~ ~ December 17, 2002, MICHAEL H. & THERESA A. SHERMAN, VC 2002-PR-157, continued from Page 134

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 and roofed deck (porch) as shown on the plat prepared by Peter L. Wrenn, dated, September 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.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

- 9:00 A.M. WINCHESTER HOMES, INC., VC 2002-PR-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9951 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 10.
- 9:00 A.M. WINCHESTER HOMES, INC., VC 2002-PR-177 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9965 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 16.
- 9:00 A.M. WINCHESTER HOMES, INC., VC 2002-PR-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9979 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 23.
- 9:00 A.M. WINCHESTER HOMES, INC., VC 2002-PR-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9978 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 34.

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

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested variances for 4 lots to permit the construction of roofed decks 5.3 feet from the side lot lines of each lot. A minimum side yard of 8.0 feet is required; therefore, variances of 2.7

~ ~ ~ December 17, 2002, WINCHESTER HOMES, INC., VC 2002-PR-158, VC 2002-PR-177, VC 2002-PR-178, and VC 2002-PR-179, continued from Page 135

feet were requested.

Mr. Bondi presented the variance requests as outlined in the statement of justification submitted with each application. He said they had taken every step to rectify the situation in the subdivision by adjusting the lot lines, but the subject lots were the only ones they were unable to rectify. Mr. Bondi stated that there would be no impact on the neighbors as many of the lots were undeveloped.

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

Ms. Gibb moved to approve VC 2002-PR-158 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES, INC., VC 2002-PR-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9951 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 10. 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 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's statement of justification and testimony indicates compliance with the required standards for a variance.
3. There is an unusual situation.
4. The variance request is a minimal 2.7 feet.
5. The applicant made every attempt to comply with the zoning requirements on the other lots in the subdivision.
6. There will be an aesthetic improvement to the property.
7. The lot is an end unit and is a different lot size and configuration than the others in the 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 so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and



~ ~ ~ December 17, 2002, WINCHESTER HOMES, INC., VC 2002-PR-158, VC 2002-PR-177, VC 2002-PR-178, and VC 2002-PR-179, continued from Page 136

the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 roofed deck addition as shown on the plat prepared by Peter L. Rinek, dated August, 2002, as revised through September 11, 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 4-0. Mr. Hart recused himself from the hearing. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve VC 2002-PR-177 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES, INC., VC 2002-PR-177 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9965 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 16. 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

~ ~ ~ December 17, 2002, WINCHESTER HOMES, INC., VC 2002-PR-158, VC 2002-PR-177, VC 2002-PR-178, and VC 2002-PR-179, continued from Page 137

applicable State and County Codes and with the by-laws of 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 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's statement of justification and testimony indicates compliance with the required standards for a variance.
3. There is an unusual situation.
4. The variance request is a minimal 2.7 feet.
5. The applicant made every attempt to comply with the zoning requirements on the other lots in the subdivision.
6. There will be an aesthetic improvement to the property.
7. The lot is an end unit and is a different lot size and configuration than the others in the 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 a roofed deck addition as shown on the plat prepared by Peter L. Rinek, dated August, 2002, as revised through September 11, 2002, as submitted with this application and is not transferable to other land.

~ ~ ~ December 17, 2002, WINCHESTER HOMES, INC., VC 2002-PR-158, VC 2002-PR-177, VC 2002-PR-178, and VC 2002-PR-179, continued from Page 138

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

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

Mr. Kelley seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve VC 2002-PR-178 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES, INC., VC 2002-PR-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9979 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 23. 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 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's statement of justification and testimony indicates compliance with the required standards for a variance.
3. There is an unusual situation.
4. The variance request is a minimal 2.7 feet.
5. The applicant made every attempt to comply with the zoning requirements on the other lots in the subdivision.
6. There will be an aesthetic improvement to the property.
7. The lot is an end unit and is a different lot size and configuration than the others in the 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;

~ ~ ~ December 17, 2002, WINCHESTER HOMES, INC., VC 2002-PR-158, VC 2002-PR-177, VC 2002-PR-178, and VC 2002-PR-179, continued from Page 139

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 roofed deck addition as shown on the plat prepared by Peter L. Rinek, dated August, 2002, as revised through September 11, 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 4-0. Mr. Hart recused himself from the hearing. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve VC 2002-PR-179 for the reasons noted in the Resolution.

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~ ~ ~ December 17, 2002, WINCHESTER HOMES, INC., VC 2002-PR-158, VC 2002-PR-177, VC 2002-PR-178, and VC 2002-PR-179, continued from Page 140

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES, INC., VC 2002-PR-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 5.3 ft. from side lot line. Located at 9978 Cryandall Dr. on approx. 3,174 sq. ft. of land zoned R-8. Providence District. Tax Map 48-3 ((46)) 34 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 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's statement of justification and testimony indicates compliance with the required standards for a variance.
3. There is an unusual situation.
4. The variance request is a minimal 2.7 feet.
5. The applicant made every attempt to comply with the zoning requirements on the other lots in the subdivision.
6. There will be an aesthetic improvement to the property.
7. The lot is an end unit and is a different lot size and configuration than the others in the 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:

~ ~ ~ December 17, 2002, WINCHESTER HOMES, INC., VC 2002-PR-158, VC 2002-PR-177, VC 2002-PR-178, and VC 2002-PR-179, continued from Page 141

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 roofed deck addition as shown on the plat prepared by Peter L. Rinek, dated August, 2002, as revised through September 11, 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 4-0. Mr. Hart recused himself from the hearing. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the votes, 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 December 17, 2002. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ December 17, 2002, (Tape 1), Scheduled case of:

9:00 A.M. ROY E. LAFROTH, SP 2002-SU-053 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 9.1 ft. from side lot line. Located at 15330 Jordans Journey Dr. on approx. 13,130 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 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. Roy LaFroth, 15330 Jordans Journey Drive, Centreville, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow modification to certain R-C lots to permit the construction of an addition 9.1 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 10.9 feet was requested.

Mr. LaFroth presented the request as outlined in the statement of justification submitted with the application. He said the request was to increase living space. Mr. LaFroth stated that the request was approved by the Virginia Run Community Association.

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

Mr. Hart moved to approve SP 2002-SU-053 for the reasons noted in the Resolution.

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~ ~ ~ December 17, 2002, ROY E. LAFROTH, SP 2002-SU-053, continued from Page 142

**COUNTY OF FAIRFAX, VIRGINIA**

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

ROY E. LAFROTH, SP 2002-SU-053 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 9.1 ft. from side lot line. Located at 15330 Jordans Journey Dr. on approx. 13,130 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 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 December 17, 2002; 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 applicant presented testimony indicating compliance with the requirements for a special permit.
7. The lot was platted prior to the down-zoning and designed at R-2 Cluster and now is subject to greater setbacks for 5 acre lots.
8. The addition requested is consistent with the location of the existing house and many such approvals in the R-C District.
9. There will not be any negative impact on the surrounding neighbors.

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

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

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

1. This special permit is approved for the location of an addition shown on the plat by Donald E. Hamilton, dated May 11, 1992, as revised by Roy E. LaFroth, dated September 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 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.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote, and Mr. Ribble was absent from the meeting.

~ ~ ~ December 17, 2002, ROY E. LAFROTH, SP 2002-SU-053, continued from Page 143

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 17, 2002.

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~ ~ ~ December 17, 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, 1/29/02, 4/9/02, 6/11/02 and 10/15/02)

Chairman DiGiulian noted that A 2001-DR-033 had been administratively moved to February 25, 2003.

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~ ~ ~ December 17, 2002, (Tape 1), After Agenda Item:

Request for Determination on Acceptance  
Application for Appeal filed by Clara and Ned Poffenberger

William Shoup, Deputy Zoning Administrator, stated that it was staff's position that the appeal application for Clara and Ned Poffenberger was not timely filed. He said the details were included in the memorandum submitted to the BZA. Mr. Shoup said Mr. Poffenberger was appealing a decision from the Department of Public Works and Environmental Services (DPWES) regarding a plat approval. He said the appellant was notified of that approval in a letter dated November 20<sup>th</sup>, but the approval occurred on November 1<sup>st</sup>; consequently, the appellant had 30 days from November 1<sup>st</sup>, to file the appeal. Mr. Shoup said the appellant submitted the appeal on December 3, 2002. He said staff did err in talking with Mr. Poffenberger on the final date that he could file the appeal and informing him of the final date. Mr. Shoup stated that it was unfortunate that occurred but the law stated that an appeal must be filed within 30 days of the date of the decision. He said it was staff's position that the appeal was not timely filed.

Ms. Gibb asked if the applicant asked for notice of when the plat was approved. Mr. Shoup said that was his understanding that the appellant requested that information from DPWES and their notice to him did not occur until 3 weeks after the decision on the plat.

Ms. Gibb asked how would the appellant been able to find out that the plat was approved if he did not receive the notice. Mr. Shoup said he could have called the office and he believed citizens could track plans of this nature on the County's website.

Ms. Gibb said she could not see how there could be a more compelling case for allowing acceptance of the appeal. Mr. Shoup said they had to go by the law, but felt bad because of the circumstances that occurred.

Mr. Kelley asked if this happened over Thanksgiving weekend. Mr. Shoup replied yes.

Mr. Hart asked why there was a decision on the 1<sup>st</sup> of November but a letter did not go out until the 20<sup>th</sup> of November. Mr. Shoup stated that in speaking with DPWES, he found that there was no obligation for them to notify the surrounding property owners every time they made a decision on a record plat, site plan or subdivision plat. He said he did not know why it took 3 weeks to get the letter mailed.

Mr. Hammack moved to accept the appeal application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ December 17, 2002, (Tape 1), After Agenda Item:

Request for Determination on Acceptance Application for Appeal filed by CRC, Inc.,  
(Coalition for Rural Conservation, Inc.); Linda Clary and Mary Jane McWilliams

Chairman DiGiulian stated that his office prepared the site plan for the property; consequently, he recused himself from the meeting.

William Shoup, Deputy Zoning Administrator, stated that the appeal was of a Zoning Administrator's determination regarding a business operating at 7600 Clifton Road. He said the issue was whether the appellants were aggrieved parties and had standing to file the appeal. Mr. Shoup said both the Virginia Code and the County Zoning Ordinance provided that any person that was aggrieved by a decision made in the administration of the Zoning Ordinance could appeal that decision to the BZA. He said as was noted in the December 9<sup>th</sup> memorandum, staff relied on two Virginia Supreme Court case for guidance on the term "aggrieved". Mr. Shoup said the first case was the Virginia Beach Beautification Commission vs. the BZA of the City of Virginia Beach. He said the second case was Virginia Association of Insurance Agents vs. the Commonwealth of Virginia. Mr. Shoup said from the findings of the Supreme Court in the cases, in order to be considered aggrieved, the decision at issue must have some substantial direct affect of the appellant. He said the court found that "aggrieved" in the Statute contemplates a substantial grievance and denial of some personal or property right, legal or equitable, or an imposition of a burden or obligation upon the petitioner different from that suffered by the public generally. Mr. Shoup stated that the court also found that a person had to show that they had an immediate pecuniary and substantial interest in the litigation and not a remote or indirect interest. He said in order for a party to be aggrieved, the court found that his substantial interest must be directly affected, and the judgment must act directly on his rights and they must not merely be collaterally or incidentally involved. Mr. Shoup said the court found the Commission involved in the first case neither owned or occupied property near the subject property and did not demonstrate a direct interest in the decision at issue; therefore, it was held that the Commission was not an aggrieved party. Mr. Shoup stated that in the subject appeal there were 3 appellants, CRC, Linda Clary and Mary Jane McWilliams. He said the criteria established by the Virginia Supreme Court must be applied to each separately. Mr. Shoup said with respect to CRC, while individual members of the Coalition might own property near the subject property, the Coalition itself did not own any property and nothing had been presented to demonstrate that the CRC as an entity had a direct interest in the decision at issue. He said with respect to the individual appellants, Ms. McWilliams resided one mile from the subject property and Ms. Clary lived approximately 2 miles from the property. Mr. Shoup said he did not believe that just because they drove by the subject property that their own property interest was directly affected. He said the affect on their interest did not rise to the level envisioned by the Supreme Court. Mr. Shoup said if anything, the affect on them fell more into the category of a collateral or incidental affect which was not sufficient to establish aggrieved status. He said staff's position was that the appellants were not aggrieved by the decision at issue and the appeal should not be accepted. Mr. Shoup noted that in a December 10, 2002, letter, Mr. Arnold, the appellants' representative, requested that the appeal application be amended to reflect that those members of the coalition identified in his November 19, 2002, letter to the Zoning Administrator, be considered as appellants.

Mr. Hart asked when the appropriate time was to deal with the issue. Patrick Taves, County Attorney's office, replied that he did not believe there was any case law on the subject but it was incumbent upon the BZA under the Statute that applies to this type of an appeal to determine whether an appealing party has aggrieved party status.

Mr. Hart said he did not understand how the BZA would make a determination of whether the appellants were an aggrieved party without information or a public hearing.

Mr. Taves replied that the court case provided gave the BZA some information in that regard. He said the court stated that in order for a petitioner to be aggrieved, it must affirmatively appear that such person had some direct interest in the subject matter or proceeding that he sought to attack. Mr. Taves said the petitioner must show that he had an immediate and pecuniary and substantial interest in the litigation and not a remote or indirect interest. He said it was incumbent upon the appealing party to present the aggrieved party status and not necessarily incumbent upon the staff to find that, but the burden was on the appellant.

Mr. Pammel asked if there was a site plan submitted and approved by the County for the changes that occurred on the property. Mr. Shoup replied that there was site plan approval and what had occurred under that site plan approval was the relocation of gas pumps and islands and a lighted canopy.

Mr. Pammel asked if there was an appeal of the site plan. Mr. Shoup replied no.

~ ~ ~ December 17, 2002, AFTER AGENDA ITEMS, continued from Page 145

Mr. Taves noted that the use of the property had come before the BZA in the past and that there were certain determinations that were made by the BZA stating that the Zoning Administrator was incorrect in finding that there was violation on the property and that the uses were allowed. He said the previous determinations made by the BZA had a bearing on the appeal.

William Arnold, the appellant's attorney, presented photographs of what existed on the site currently. He said the point of the appeal was that the use had changed substantially since it was considered in 1983. Mr. Arnold said there was standing in the case and it was not appropriate at this time for the BZA to consider the issue of standing. He said with regard to the Virginia Beautification case, which was a case that involved an interpretation of the State Statute for an appeal to the court as opposed to an appeal to the BZA. Mr. Arnold said it was distinguishable on that basis. He said the Virginia Beach Beautification Commission did not identify members of the association. Mr. Arnold stated that they had identified the members. He presented a tax map indicating some of the members of the CRC and stated that members live near the subject property. Mr. Arnold said the definition of aggrieved was met because the appellants felt there was a violation of the Zoning Ordinance. He said the harm to adjacent owners was no different than the harm to the general public. Mr. Arnold said if there was a loss of economic value because of the location of the property, it would apply to many of the properties. He said the landowners that were interested and lived in the vicinity of the property should have the right to have the decision of the Zoning Administrator reviewed by the BZA.

Mr. Shoup distributed a map which depicted the appellants' properties.

Vice Chairman Hammack called for speakers.

Ken Sanders, representative for the owner of the property, came forward stating that he agreed with the position of the County.

Linda Clary, President of CRC, came forward stating that when the CRC submitted their request to the County on May 23<sup>rd</sup>, the coalition was unincorporated and they came together as a group of homeowners as a result of viewing the evolution of a gas station in their community to find out what they could do about it. Ms. Clary said it was only after they were threatened with a lawsuit did they seek legal counsel and form a corporation. She said some of the members were immediately adjacent to the subject property. Ms. Clary stated that the approved site plan was not what was built.

Jane McWilliams came forward stating that she was present to speak on behalf of her daughter, Colleen Hahn, who lived across the street from the subject property. She said they were an aggrieved party and asked the BZA to consider accepting the appeal.

Mr. Hart asked if one of the appellants resided closer to the subject property would there be an issue. Mr. Shoup replied no.

Mr. Hart asked why the BZA should make a distinction between the entity as appellant and the entity composed of neighbors.

Mr. Taves stated that it was the law. He said in the Virginia Beach Beautification Commission case, the Supreme Court said that the Commission neither owned nor occupied real property within or in close proximity to the property, which it was a corporate entity and its aggrieved party status must come from the corporate entity and not from individual shareholders, stockholders, or members.

Mr. Pammel said Ms. Clary alleged that what transpired on the property was not in accord with the site plan and that issue was worth exploring to find out if the owners complied with the site plan requirements. He said there were issues that the BZA would need to review. Mr. Pammel moved to accept the appeal application.

Mr. Hart seconded the motion. He said he was not persuaded the two individuals were aggrieved parties; however, he would be more comfortable receiving more information and understanding all the issues.

Ms. Gibb said she would support the motion.

~ ~ ~ December 17, 2002, AFTER AGENDA ITEMS, continued from Page 146

Mr. Kelley said he would oppose the motion because the two individuals lived too far away from the subject property.

Mr. Hammack stated that he had reservations, but would support the motion.

The motion carried by a vote of 4-1-1. Mr. Kelley voted against the motion, and Chairman DiGiulian recused himself from the meeting. Mr. Ribble was absent from the meeting.

The appeal application was scheduled for February 18, 2003, at 9:30 a.m.

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~ ~ ~ December 17, 2002, (Tape 1), After Agenda Item:

Approval of April 23, 2002 Minutes

Mr. Hart moved to approve the minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ December 17, 2002, (Tape 1), After Agenda Item:

Request for Additional Time  
Korean Central Presbyterian Church, SPA 83-P-057-3

Ms. Gibb moved to approve 90 days of Additional Time. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was March 8, 2003.

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~ ~ ~ December 17, 2002, (Tape 1), After Agenda Item:

Approval of December 10, 2002 Resolutions

Ms. Gibb moved to approve the Resolutions. Mr. Kelley 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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~ ~ ~ December 17, 2002, (Tape 1), After Agenda Item:

See letter concerning Good Shepherd Church  
SP 2002-HM-045 (def. from 12/3/02)

Mr. Hart moved to approve the Resolution for SP 2002-HM-045 with changes. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:45 a.m.

Minutes by: Regina Thorn Corbett

Approved on: September 9, 2003

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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, January 7, 2003. The following Board Members were present: John DiGiulian; Robert Kelley; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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.

Mr. Kelley nominated John DiGiulian for Chairman. He nominated John Ribble and Paul Hammack to be Vice Chairmen. Mr. Hart seconded the motion, which carried by a vote of 7-0. There were no other Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ January 7, 2003, (Tape 1) Scheduled case of:

9:00 A.M. DARRELL A. CARLISLE & PATRICIA E. O'TOOLE, VC 2002-DR-172 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 14.8 ft. from side lot line. Located at 1224 Daleview Dr. on approx. 1.28 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((9)) 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. Darrell Carlisle, 1224 Daleview Drive, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of a 1.5-story detached garage 14.8 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a variance of 5.2 feet was requested.

Mr. Carlisle presented the variance request as outlined in the statement of justification submitted with the application. He explained that they satisfied the nine requirements for a variance. He stated that they bought the property in good faith, that the property was exceptionally narrow and had topographical conditions. He explained that the property was exceptionally narrow because the house was located in the center of the property and to build a standard garage would require 44.0 feet and the house was only 38.5 feet from the south side property line. He explained that the property was smaller than the current R-1 zoning requirement. He stated that the land sloped away from the house. He stated that the septic tank was located about 14.0 feet away from the house and the septic field filled the entire backyard. Mr. Carlisle stated that there were twelve properties in the neighborhood that had detached garages and they did not need a variance. He stated that the 20.0 foot setback requirement would produce undue hardship because they would not be able to shelter their vehicles and newer homes in the area had 3 and 4 car garages. Mr. Carlisle explained that similar undue hardships were not shared by other properties in the neighborhood because most of the houses allowed construction without a variance. He explained that the 20.0 foot setback would prohibit them from sheltering all of their vehicles. He stated that the area where they would build would be landscaped after construction was done, and almost 15.0 feet would remain between the property line and the garage. He stated that a real estate agent believed that the entire neighborhood would benefit from an increase in value from the construction. He explained that the character of the neighborhood would not change and that most of the neighbors did not object to the construction of the garage.

Mr. Hart asked the applicant if the proposed garage was touching the drain field and if the garage was out of the septic field. Mr. Carlisle stated that the plat was just approximate and that the drain field was further to the left.

Mr. Hart asked staff if there was a setback requirement for a septic field from a foundation. Ms. Langdon stated that the setback was 10.0 feet.

Mr. Hart asked the applicant if the structure could be shifted further to the north. The applicant stated that the structure would run into the septic tank.

Mr. Hart asked the applicant if there was an alley behind the house. The applicant stated that there was an easement that ran behind the house that was used for a horse trail.

Mr. Hart asked if there was a living space above the garage. Mr. Carlisle stated that it would be used for storage.

~ ~ ~ January 7, 2003, DARRELL A. CARLISLE & PATRICIA E. O'TOOLE, VC 2002-DR-172, continued from Page 149

Mr. Hart inquired of staff if the structure was a carport instead of a garage, would they be able to do construction without a variance. Ms. Langdon stated that they would.

Mr. Hart asked staff what was the minimum front yard setback in an R-1 District. Ms. Langdon stated that it was 40.0 feet.

Mr. Hart asked staff if the house was 104.0 feet from the street. Ms. Langdon stated that it was.

Chairman DiGiulian called for speakers.

Susan Irman, Attorney, hired by Richard and Amal Ward, 1232 Dale View Drive, came forward to speak in opposition to the requested variance. She stated that there were many lots in the neighborhood smaller than the one in question and that the drop in topography was not unique. She stated that the proposed structure encroached on the septic field and tank. She stated that there were other places on the lot where the structure could be placed. Ms. Irman explained that there were other neighbors in opposition of the variance. She stated that she did not feel that the structure would enhance the value of neighboring properties.

Robert Hallmark, 1181 Dale View Drive, came forward to speak in opposition. He stated that there was adequate room for the structure to be placed elsewhere. He stated that the file did not contain an engineering report stating that the garage could not be attached to the house. He explained that the lot was not shallow and that the topographical conditions were not unique and that the owners of the property did not meet the requirements to permit a variance.

Richard Ward, 1232 Dale View Drive, came forward to speak in opposition stating that there were many homes that had been renovated in the neighborhood and this was the first time a variance had been requested. He stated that it was not in the best interest of the neighborhood for the variance to be requested and that the neighbor on the north side submitted a letter in opposition to the variance. Mr. Ward explained that there were other options in placing the addition and that the applicant refused all other options. He explained that the requested variance exceeded the standards.

Mr. Carlisle stated, in his rebuttal, that because of the septic tank and the topography problems, they could not build behind the house without moving the septic system. He stated that there would be a substantial financial burden to build the structure behind the house. He stated that there should be exceptions to the setback limitations.

Ms. O'Toole stated in her rebuttal that they met the criteria for a narrow lot because all of the other lots on their side of the street were wider. She explained that they considered other options in placing the garage, but none of them were feasible.

Mr. Hart asked the applicant if the 2-car garage on the lower level was going to be converted into something else. Mr. Carlisle stated that they were keeping the garage as a garage but in the future could convert it to living space.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VC 2002-DR-172 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DARRELL A. CARLISLE & PATRICIA E. O'TOOLE, VC 2002-DR-172 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 14.8 ft. from side lot line. Located at 1224 Daleview Dr. on approx. 1.28 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((9))2. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ January 7, 2003, DARRELL A. CARLISLE & PATRICIA E. O'TOOLE, VC 2002-DR-172, continued from Page 150

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2003; and

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

1. The applicants are the owners of the land.
2. There are a number of letters from neighbors in opposition to the request for a variance.
3. The applicant has other options in which to place the proposed garage.
4. The proposed garage is adjacent to the drainfield, and the drain field is not specifically located.
5. There is nothing unusual about the lot in that it is just shy of 150.0 feet in width.

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 6-0-1. Mr. Hammack abstained from the vote. Mr. Hart moved to waive the 12-month waiting period for refiling. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

~ ~ ~ January 7, 2003, DARRELL A. CARLISLE & PATRICIA E. O'TOOLE, VC 2002-DR-172, continued from Page 151

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 7, 2003, (Tape 1) Scheduled case of:

9:00 A.M. MICHAEL BELLO, VC 2002-BR-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line such that side yards total 17.3 ft. Located at 5116 Lavery Ct. on approx. 15,455 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4 ((6)) 262.

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 Bello, 5116 Lavery Court, 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 construction of a garage addition to be located 6.5 feet from a side lot line, such that side yards totaled 17.3 feet. A minimum side yard of 8.0 feet with a total minimum side yard of 24.0 feet is required; therefore, variances of 1.5 feet and 6.7 feet were requested.

Mr. Bello presented the variance request as outlined in the statement of justification submitted with the application. He explained that the lot was narrow. Mr. Bello stated that there was an 8.0 foot setback and the only place for a garage was the left side of the house. He stated that they moved the garage forward slightly because the lot was tapered. He stated that most of the homes in the subdivision were larger and had garages or carports and driveways and that there was little parking in their cul-de-sac. He stated that many of the neighbors had converted their carports into garages. He explained that their family had grown and they needed additional storage and space to put their car and that his elderly in-laws lived with him and often had to park far away from their home. He stated that the variance would not be of substantial detriment to the neighboring properties and neighbors were in support of the variance. He stated that character of the zoning district would not be changed.

Mr. Hammack asked the applicant how many feet from the setback was the request. Mr. Bello replied that the plat showed the actual amount he was asking for.

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

Mr. Hammack moved to approve VC 2002-BR-175 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL BELLO, VC 2002-BR-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line such that side yards total 17.3 ft. Located at 5116 Lavery Ct. on approx. 15,455 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4 ((6)) 262. 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 7, 2002; and

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



~ ~ ~ January 7, 2003, APPL MICHAEL BELLO, VC 2002-BR-175, continued from Page 152

1. The applicant is the owner of the land.
2. The lot lines converge to the rear of the lot.
3. The main dwelling is positioned at an angle to the lot lines.
4. The proposed variance of 1.5 feet is only for a small corner of the garage.
5. The total lot line variance is minimal.
6. The character of the neighborhood will 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 an addition as shown on the plat prepared by Larry N. Scartz, dated, October 4, 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.

~ ~ ~ January 7, 2003, APPL MICHAEL BELLO, VC 2002-BR-175, continued from Page 153

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 7, 2003, (Tape 1) Scheduled case of:

9:00 A.M. EXXON/MOBIL CORPORATION FORMERLY EXXON CORPORATION, VC 2002-DR-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a 6.0 ft. high wall in front yard. Located at 6720 and 6724 Old Dominion Dr. on approx. 1.28 ac. of land zoned C-8, CRD, HC and SC. Dranesville District. Tax Map 30-2 ((1)) 52 and 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. Keith Martin, Walsh Colucci, 2200 Clarendon Boulevard, replied that it was.

Lindsay Shulenberger, Staff Coordinator, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a 6.0 foot high wall in the front yard. The Zoning Ordinance permits only a 4.0 foot wall; therefore, a variance of 2.0 feet was requested.

Mr. Martin presented the variance requested as outlined in the statement of justification submitted with the application. He explained that the Board of Supervisors approved a special exception amendment for the proposed redevelopment of the service station and imposed the development condition that they apply for a variance to allow the screening wall to be 6.0 feet tall.

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

Mr. Hart moved to approve VC 2002-DR-162 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EXXON/MOBIL CORPORATION FORMERLY EXXON CORPORATION, VC 2002-DR-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a 6.0 ft. high wall in front yard. Located at 6720 and 6724 Old Dominion Dr. on approx. 1.28 ac. of land zoned C-8, CRD, HC and SC. Dranesville District. Tax Map 30-2 ((1)) 52 and 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 January 7, 2003; 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 indicates compliance with the required standards for a variance.

~ ~ ~ January 7, 2003, EXXON/MOBIL CORPORATION FORMERLY EXXON CORPORATION,  
VC 2002-DR-162, continued from Page 154

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 masonry wall shown on plats, consisting of two sheets, prepared by The Plan Source, and dated August 21, 2002, and revised through August 29, 2002, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 January 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 7, 2003, (Tape 1) Scheduled case of:

9:00 A.M. JOHN B. GREENHALGH, VC 2002-DR-168 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 30.0 ft. from front lot line of a corner lot, fence greater than 4.0 ft. in height to remain in front yards and dwelling to remain 14.7 ft. from side lot line. Located at 2119 Grayson Pl. on approx. 16,914 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 97A.

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 B. Greenhalgh, 2119 Grayson Place, Falls Church, Virginia, replied it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit construction of an addition 30.0 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 35.0 feet; therefore, a variance of 5.0 feet was required for the addition. The applicant also requested approval to permit a fence greater than 4.0 feet in height to remain in the front yard. A .3 of a foot administrative reduction to the minimum side yard was granted to allow the dwelling to remain 14.7 feet from the side lot line and therefore was no longer part of the variance request.

Mr. Greenhalgh presented the variance request as outlined in the statement of justification submitted with the application. He explained that they had notified their neighbors of their intent and had not received any negative feedback. He stated that the improvement to their property would enhance the neighborhood and that no other properties would be adversely impacted as a result of the addition. He stated that the neighborhood supported and welcomed the addition. Mr. Greenhalgh stated that the property was narrow, with a width of 85.0 feet and the current Zoning Ordinance maintained a minimum of 105.0 feet. He explained that since they were on a corner lot they were considered to have two front yards. He stated that the fence existed when the property was purchased.

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

Mr. Ribble moved to approve VC 2002-DR-168 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN B. GREENHALGH, VC 2002-DR-168 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 30.0 ft. from front lot line of a corner lot, fence greater than 4.0 ft. in height to remain in front yards and dwelling to remain 14.7 ft. from side lot line (**DWELLING WAS ADMINISTRATIVELY APPROVED**). Located at 2119 Grayson Pl. on approx. 16,914 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 97A. 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 7, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has met the standards required for a variance.
3. The applicant has stated that the lot is narrow.
4. The lot has a double front yard.

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

~ ~ ~ January 7, 2003, JOHN B. GREENHALGH, VC 2002-DR-168, continued from Page 156

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 the fence shown on the plat prepared by Bowman Consulting, dated July 15, 2002, as revised through October 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.

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 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 7, 2003, (Tape 1) Scheduled case of:

9:00 A.M. PATRICK AND KIMBERLY MEERE, VC 2002-SU-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot lines. Located at 4323 Cub Run Rd. on approx. 16,769 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 41A.

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 Meere, 4323 Cub Run Road, Chantilly, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit construction of an accessory structure 5.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a variance of 15.0 feet was requested.

Mr. Meere presented the variance request as outlined in the statement of justification submitted with the application. He explained that the garage would be put in the most logical place which was at the top of the driveway. He stated that without the variance the garage would have to be placed in the middle of the back yard due to set back requirements. He stated that the home was old and there was limited storage space, with only two small closets on the second floor. He stated that other homes in the neighborhood had garages.

Ms. Gibb asked the applicant if the driveway was existing and if the width of the driveway would remain the same. The applicant replied that the driveway was existing, but the width would be changed.

Ms. Gibb asked the applicant about outlot 105 that the garage backed up to. The applicant replied that the tax map was outdated and that the lot was owned by their neighbors and they had a home on the lot.

Ms. Gibb asked the applicant if he knew if the lot number for outlot 105 remained the same. He replied that he assumed that it was lot number 105.

Ms. Gibb asked the applicant if he considered moving the garage to the north. He replied that he had approval from both neighbors to put the garage in the named location. He explained that there was a graveyard where his children played near the property and if he moved the garage north he would not be able to see his children playing. He stated that sometime in the future they would like to add an addition and to put the garage more to the north would hinder the sight line.

Ms. Gibb asked the applicant if his yard was fenced. He replied that it was.

Mr. Hammack asked the applicant why he needed a 3-car, 2-story garage with a bathroom. He explained that they were not presently planning to put a bathroom in but might add one in the future. He stated that he had three vehicles and was also going to have a woodworking shop and the upstairs would be storage.

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

Ms. Gibb moved to deny VC 2002-SU-169 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK AND KIMBERLY MEERE, VC 2002-SU-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot lines. Located at 4323 Cub Run Rd. on approx. 16,769 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 41A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ January 7, 2003, PATRICK AND KIMBERLY MEERE, VC 2002-SU-169, continued from Page 158

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2003; and

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

1. The applicants are the owners of the land.
2. The bulk and mass of the garage is too far into the building restriction line.
3. The lot does have an exceptional shape, but the garage could be better located.

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. 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 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 7, 2003, (Tape 1) Scheduled case of:

9:00 A.M. ED COVE, VC 2002-SU-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line. Located at 13903 Waverly Creek Ct. on approx. 12,046 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 44-2 ((12)) 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. Ed Cove, 13903 Waverly Creek Court, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit construction of an addition 6.5 feet from a side lot line. The Zoning Ordinance requires an 8.0 foot minimum side yard; therefore, a variance of 1.5 feet was required.

Mr. Cove presented the variance request as outlined in the statement of justification submitted with the application. He explained that the addition did not extend outside the original footprint of the existing garage. He stated that when the house was constructed, it was placed 6.5 feet from the side property line. He stated that the house was on a cul-de-sac and was rotated in relationship to the street and the side property line and that to meet the side yard set back requirements would prohibit the construction of the addition. He stated that similar additions had been added in the neighborhood; however, the placement of the house restricted the second floor addition. He stated that the addition would not greatly affect the neighboring property.

Mr. Hammack asked the applicant if he had discussed the addition with his next door neighbor. He replied that the house was sold and he had not yet met his neighbors but they had been notified.

Mr. Hammack asked the applicant what part of the neighbor's house would be adjacent to the garage and the proposed addition. He replied that their bedroom and formal dining room would be adjacent.

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

Mr. Kelley moved to approve VC 2002-SU-173 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ED COVE, VC 2002-SU-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line. Located at 13903 Waverly Creek Ct. on approx. 12,046 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 44-2 ((12)) 25. 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 7, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance.
3. The addition is no larger than the existing footprint of the house.
4. The addition is a second floor addition.
5. The addition is compatible with the existing dwelling.

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



~ ~ ~ January 7, 2003, ED COVE, VC 2002-SU-173, continued from Page 160

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

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

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

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

1. This variance is approved for the location of a second-story addition, shown on the plat prepared by Eugene A. Kierman, Jr., dated September 5, 1985, 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 January 15, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 7, 2003, (Tape 1), After Agenda Item:

Approval of June 25, 2002 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Pammel seconded the motion, which carried by a vote of 7-0. Mr. Ribble was not present for the vote.

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~ ~ ~ January 7, 2003, (Tape 1), After Agenda Item:

Request for Intent to Defer  
Vincent A. Tramonte, II, Louise Ann Caruthers,  
Robert C. Tramonte and Silvio Diana, A 2002-LE-031

Ms. Gibb moved to defer appeal A 2002-LE-031 to April 15, 2003. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

As there was no other business to come before the Board, the meeting was adjourned at 11:38 a.m.

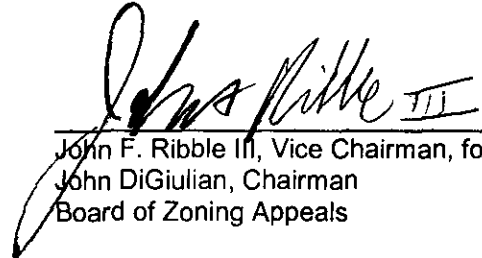
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Minutes by: Alison Capo

Approved on: September 21, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 14, 2003. The following Board Members were present: John DiGiulian, John Ribble, Nancy Gibb, James Hart, Robert Kelley and James Pammel. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:02 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.

~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. COLLEEN AND TOM FERGUS, VC 2002-HM-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. from rear lot line and accessory structure to remain 2.8 ft. from rear lot line and 1.0 ft. from side lot line. Located at 13000 Cockerill Ct. on approx. 9,811 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((12)) 103.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Colleen Fergus, 13000 Cockerill Court, Herndon, Virginia, replied that it was.

Cathy Belgin, Senior Staff Coordinator, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of an addition 13.2 feet from the rear lot line and to permit an accessory structure to remain 2.8 feet from the rear lot line and 1.0 feet from the side lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 11.8 feet was requested for the addition. The Zoning Ordinance requires a minimum side yard of 8.0 feet and a rear yard of 9.6 feet for the accessory structure which is in excess of 8.5 feet in height; therefore variances of 7.0 feet for the side yard and 6.8 feet for the rear yard for the accessory structure were requested.

Mrs. Fergus presented the variance request as outlined in the statement of justification submitted with the application. She stated that the lot was exceptionally shallow and that the property line did not run parallel to the rear of the home. She stated that their home abutted 5 acres of open common property and therefore, she did not believe the addition would be detrimental to any adjacent homeowners.

Mr. Hart asked if the shed was on a foundation that could be shifted toward the middle of the yard. Mrs. Fergus stated that the shed was a removable structure; however, the yard on that particular side was very shallow and to bring the shed up any further would be coming toward the deck, which would be removed and replaced with the addition.

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

Mr. Pammel moved to approve VC 2002-HM-170 for the reasons stated in the Resolution. Mr. Pammel noted that an inspection should be made on the property to ensure the shed is located as approved by the Board.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COLLEEN AND TOM FERGUS, VC 2002-HM-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. from rear lot line and accessory structure to remain 2.8 ft. from rear lot line and 1.0 ft. from side lot line. **(THE BZA APPROVED THE ACCESSORY STRUCTURE 3.0 FT. FROM THE REAR AND SIDE LOT LINES)**. Located at 13000 Cockerill Ct. on approx. 9,811 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((12)) 103. 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

~ ~ ~ January 14, 2003, COLLEEN AND TOM FERGUS, VC 2002-HM-170, continued from Page 163

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 14, 2003; 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 reasonable given the configuration of the lot and the location of the house on the lot.
3. The lot is very narrow and of a shallow nature.
4. The fact that the house is located so close to the rear lot line causes the need for a variance.
5. The adjoining property is used by the adjoining community for active recreational purposes; therefore, there would be no impact if the application is approved.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 accessory structure (shed) shown on the plat prepared by Dewberry & Davis LLC, dated August 21, 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.

~ ~ ~ January 14, 2003, COLLEEN AND TOM FERGUS, VC 2002-HM-170, continued from Page 164

3. The addition shall be architecturally compatible with the existing dwelling.
4. The wood shed shall be moved so that it is no closer than 3.0 feet to either of the contiguous property lines.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Ribble was not present for the vote. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LARRY G. DAVIS, VC 2002-MA-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 3617 Terrace Dr. on approx. 11,077 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((3)) 128.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Larry Davis, 3617 Terrace Drive, Annandale, Virginia, replied that it was.

Lindsay Shulenberger, Staff Coordinator, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of an addition 7.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet; therefore, a variance of 5.0 feet was requested.

Mr. Davis presented the variance request as outlined in the statement of justification submitted with the application. Mr. Davis stated that the house was situated in such a way on the property that a variance is required. He stated that the plans for a garage were reasonable and would not deteriorate from the appearance of their property or surrounding properties. He requested the Board's approval of the application.

Mr. Hart confirmed that an existing aluminum shed would be removed once the proposed garage was built and therefore requested a condition stating as such. Mr. Davis agreed with his request.

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

Mr. Hart moved to approve VC 2002-MA-167 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LARRY G. DAVIS, VC 2002-MA-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 3617 Terrace Dr. on approx. 11,077 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((3)) 128. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ January 14, 2003, LARRY G. DAVIS, VC 2002-MA-167, continued from Page 165

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2003; 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 home is older and without a garage, and is positioned on the lot in such a way that a variance would be required for any proposed location of a garage.
4. The applicant chose to put the garage on the side which has more room and he will be removing the existing driveway.
5. There should not be a significant impact on the adjacent neighbors because the addition will be 7.0 feet from the side lot line.
6. The location of the existing chimney creates a need for a wider than usual garage.
7. The lot is narrower at the front than it is at the rear.

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

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

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

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

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

~ ~ ~ January 14, 2003, LARRY G. DAVIS, VC 2002-MA-167, continued from Page 166

1. This variance is approved for the location of the garage addition shown on the plat prepared by Dominion Surveyors, Inc., dated July 27, 20002, as revised through September 21, 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 existing aluminum shed shown on the plat shall be removed.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 5-0. Mr. Ribble was not present for the vote. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. HENDRIKA VANDE KEMP, SP 2002-MA-056 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7815 Rebel Dr. on approx. 21,864 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((11)) 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. Hendrika Vande Kemp, 7815 Rebel Drive, Annandale, Virginia, replied that it was.

Lindsay Shulenberger, Staff Coordinator, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested approval of the special permit application to allow a home professional office to provide psychotherapy to serve one client at a time with a maximum of 25 clients per week. The proposed hours of operation would be 7:00 a.m. to 8:00 p.m., four days a week, not to include weekends. The total hours of operation would not exceed 25 hours per week. The therapy would be provided by the applicant only. The existing carport provided two spaces for the dwelling and an existing paved driveway provided four additional spaces for the home professional office. Ms. Shulenberger stated that staff recommended approval of the application subject to the development conditions.

Ms. Vande Kemp presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the request was necessary due to a head injury disability which required sleep during the daytime hours and that the environment needed to be controlled and quiet and therefore, requested the Board's approval of the application.

Ms. Gibb questioned if the applicant could have a couple, husband and wife, or only one person at a time in the home professional office. Ms. Shulenberger stated that it was staff's understanding that it was one client at a time. Ms. Vande Kemp stated that her application stated that she could see couples; however, not group therapy.

There were no speakers, and Chairman DiGiulian closed the public hearing. Chairman DiGiulian noted that two letters in support of the application were received by the Board.

~ ~ ~ January 14, 2003, HENDRIKA VANDE KEMP, SP 2002-MA-056, continued from Page 167

Ms. Gibb moved to approve SP 2002-MA-056 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

HENDRIKA VANDE KEMP, SP 2002-MA-056 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7815 Rebel Dr. on approx. 21,864 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((11)) 18. 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 14, 2003; 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 special permit.
3. The staff report was written in favor of the request.
4. A lot of thought and compromise went into the request because a number of issues were resolved regarding how many clients were permitted and the hours of operation.

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). 8-907 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, 7815 Rebel Road (21,864 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 Alexandria Surveys International, LLC dated September 25, 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 hours of operation of the home professional office shall be limited to 7:00 a.m. to 8:00 p.m., 4 days a week, not to include weekends.



~ ~ ~ January 14, 2003, HENDRIKA VANDE KEMP, SP 2002-MA-056, continued from Page 168

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 733 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 two (2) spaces for the Home Professional Office. All parking shall be on-site as shown on the special permit plat.
10. There shall be only two (2) clients at any one time on site and the maximum number of clients per week shall be limited to twenty-five (25).
11. Evergreens that are a minimum of 6 feet tall at the time of planting shall be provided along the western property line of the subject parcel from the southern edge of the carport to an area near the base of the driveway. The evergreens shall be a maximum of 12 feet apart.
12. 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.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ESC IV LLC, SP 2002-LE-058 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 7003C Manchester Blvd. on approx. 16.13 ac. of land zoned C-8. Lee District. Tax Map 91-1 ((12)) N.

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 Early, 19871 Annenberg Drive, Ashburn, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested a billiard hall in an existing space within a shopping center. The applicant stated that the proposed restaurant and billiard hall would seat 175 patrons and would have 14 to 16 pool tables within 9,313 square feet of space. She stated that the proposed hours of operation would be 11:30 a.m. to 2:00 a.m. daily with a total of 16 employees on-site at any one time. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Kelley asked when a use would be considered an accessory use or a special permit. Susan Langdon, Chief, Special Permit and Variance Branch, stated that it would depend on the number of billiard tables

~ ~ ~ January 14, 2003, ESC IV LLC, SP 2002-LE-058, continued from Page 169

within the structure. She stated that Zoning Administration staff would make the determination on how many restaurant seats and billiard tables were within the facility, and once the number of tables exceeded a certain number based on the square footage, then it would become a billiard hall instead of an accessory use to a restaurant.

Mr. Early presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Early stated that this request would be the fourth operation within the area which would provide 40 new jobs. He stated that the request would not affect traffic and asked for the Board's approval.

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

Mr. Kelley moved to approve SP 2002-LE-058 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ESC IV LLC, SP 2002-LE-058 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 7003C Manchester Blvd. on approx. 16.13 ac. of land zoned C-8. Lee District. Tax Map 91-1 ((12)) N. 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 14, 2003; and

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

1. The applicants are the lessees of the land.
2. The applicant 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). 4-803 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, ESC IV L.L.C., and is not transferable without further action of this Board, and is for the location indicated on the application, 7003 C Manchester Boulevard, 9,313 square feet of tenant space within the 16.13 acre site, and is not transferable to other land. Notwithstanding that the Special Permit applies to the entire shopping center, the approval of this Special Permit will not negate the establishment of other permitted uses or modifications to other features shown on the Special Permit Plat without the approval of an amendment to the Special Permit so long as all applicable provisions of the Zoning Ordinance are satisfied.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by 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

~ ~ ~ January 14, 2003, ESC IV LLC, SP 2002-LE-058, continued from Page 170

conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit 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.
5. A tenant layout parking tabulation revision shall be submitted and approved by the Department of Public Works and Environmental Services (DPWES) prior to the issuance of a Non-RUP for the billiard hall use.
6. The maximum hours of operation shall be 11:30 a.m. until 2:00 a.m., daily.
7. The maximum number of employees on site at any one time for this use shall be sixteen (16).
8. The maximum number of billiard tables shall be sixteen (16); the eating establishment shall have a maximum of 175 table seats and thirty-two (32) counter seats.

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

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ELLEN LYNNE FRANKLIN, VC 2002-MV-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from rear lot line. Located at 10705 Anita Dr. on approx. 21,781 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 152. (Concurrent with SP 2002-MV-057).

9:00 A.M. ELLEN LYNNE FRANKLIN, SP 2002-MV-057 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 2.8 ft. and 2.2 ft. from rear lot line. Located at 10705 Anita Dr. on approx. 21,781 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 152. (Concurrent with VC 2002-MV-171).

Chairman DiGiulian called the applicant to the podium and asked if the affidavits before the Board of Zoning Appeals (BZA) were complete and accurate. Ellen Franklin, 10705 Anita Drive, Lorton, Virginia, replied that it they were.

Mavis Stanfield, Staff Coordinator, presented the requests as contained in the staff report. She stated that the applicant requested a special permit to permit two sheds to remain 2.8 feet and 2.2 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 9.8 feet and 9.5 feet, respectively; therefore,

~ ~ ~ January 14, 2003, ELLEN LYNNE FRANKLIN, VC 2002-MV-171 and SP 2002-MV-057, continued from Page 171

modifications of 7.0 feet and 7.3 feet were requested. The applicant also requested a variance to permit construction of an addition 17.5 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 7.5 feet was requested.

Ms. Franklin presented the special permit and variance requests as outlined in the statement of justification submitted with the application. She stated that there was already one existing shed on the property when they purchased the home. She stated that they were not told a permit would be necessary or that the existing shed was not in compliance and therefore, they constructed the shed of the same materials and currently had matching sheds side-by-side. Regarding the addition, Ms. Franklin stated that the addition would be to the rear of the L-shaped house, and set back on the lot; therefore, the need for the variance.

Mr. Pammel asked if the sheds could be moved. Ms. Franklin stated that they could be moved.

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

Mr. Pammel moved to approve SP 2002-MV-057 in part to require a minimum setback from the rear lot line of 5.0 feet because the property abuts a buildable lot. Mr. Hart seconded the motion, which failed by a vote of 3-3. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voted against the motion. Mr. Hammack was absent from the meeting.

Mr. Kelley stated that there was no need to move the shed and that the expense was not necessary. He stated that they were screened adequately and the applicant should not be required to move them. Chairman DiGiulian agreed with Mr. Kelley's statement.

Mr. Pammel moved to approve VC 2002-MV-171 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELLEN LYNNE FRANKLIN, VC 2002-MV-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from rear lot line. Located at 10705 Anita Dr. on approx. 21,781 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 152. (Concurrent with SP 2002-MV-057). 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 14, 2003; 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 shallowness of the lot and the location of the house towards the rear portion of the lot results in a very minimal rear yard and therefore, any addition in the rear yard would require 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;

~ ~ ~ January 14, 2003, ELLEN LYNNE FRANKLIN, VC 2002-MV-171 and SP 2002-MV-057, continued from Page 172

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson, dated August 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. 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 January 22, 2003. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb made a substitute motion to approve SP 2002-MV-057 for the reasons stated in the Resolution.

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~ ~ ~ January 14, 2003, ELLEN LYNNE FRANKLIN, VC 2002-MV-171 and SP 2002-MV-057, continued from Page 173

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELLEN LYNNE FRANKLIN, SP 2002-MV-057 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 2.8 ft. and 2.2 ft. from rear lot line. **(THE BZA APPROVED THIS ACCESSORY STRUCTURE 3.6 FT. FROM THE REAR LOT LINE)**. Located at 10705 Anita Dr. on approx. 21,781 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 152. (Concurrent with VC 2002-MV-171). 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 14, 2003; 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 two sheds, as shown on the plat prepared by Bryant L. Robinson, dated August 2, 2002, submitted with this application and is not transferable to other land.

~ ~ ~ January 14, 2003, ELLEN LYNNE FRANKLIN, VC 2002-MV-171 and SP 2002-MV-057, continued from Page 174

2. Shed B shall be moved so that it is no closer than 3.6 feet to the rear lot line.

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 4-2. Chairman DiGiulian and Mr. Kelley voted against the motion. 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 January 22, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        FREDERICK C. LEE & CONNIE J. REID, VC 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in front yard and 7.0 ft. in a side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 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. Frederick Lee and Connie Reid, 8214 Robey Avenue, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested construction of a fence 8.0 feet in height in the front and side yards. The Zoning Ordinance requires a maximum fence height of 4.0 feet in the front yard and 7.0 feet in the side yard; therefore, variances of 4.0 feet in the front yard and 1.0 feet in the side yard were requested.

Mr. Hart asked if there was any enforcement activity for violations on the next door neighbor's property. Ms. Stanfield stated that there were only two closed cases and that there were no current violations.

Mr. Hart asked if the debris on the property was permitted. Ms. Stanfield stated that there was no active case on the property and since there was construction currently taking place on that property, it was considered construction debris.

Mr. Lee presented the variance request as outlined in the statement of justification submitted with the application. He stated that their house was 70 feet behind their neighbor's home due to the location of their house on their lot. Mr. Lee stated that their house faced their neighbors' house and not a street. He stated that there had been a barrier of bushes located on Virginia Department of Transportation (VDOT) right-of-way property, until the neighbor removed them without approval. Mr. Lee stated that the request was in order to maintain their property value. He stated that there was no adjacent property to one side of their home because they were at the end of a cul-de-sac and that there would not be a distraction to traffic.

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

Mr. Hart asked if the existing fence, at 5.0 feet, was in violation. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the maximum height was 4.0 feet in the front yard and that it might be a violation; however, the fence was not shown on the plat.

Ms. Reid stated that the 5.0 foot chain link fence at 8220 Robey Avenue was along the front property line and stated that the fence had existed since 1990. Ms. Langdon stated that staff could review this information with the Zoning Inspector.

Mr. Hart stated that he was not comfortable concluding that the appearance of the neighbor's property was an extraordinary condition and therefore, moved to defer the application for 30 days.

Mr. Hart asked staff to address issues such as the existing chain link fence being a tenth of a foot away from

~ ~ ~ January 14, 2003, FREDERICK C. LEE & CONNIE J. REID, VC 2002-MA-176, continued from Page 175

the proposed fence, if it was considered in violation. He referred to photographs, stating that the applicants were contending that the front of the lot was illegally cleared and that a third driveway was illegally added to their property and asked for clarification. Ms. Stanfield stated that in a Zoning Enforcement report, the driveway was constructed legally.

Mr. Lee stated that the third driveway was added at the same time that the natural barrier of bushes was removed, and that VDOT had instructed the owner to remove a 16-foot concrete pipe which was placed under the driveway for drainage. He stated that the pipe sat next to the chain link fence and that it was this third driveway in question, not the legal driveway in the front yard. Ms. Reid stated that VDOT had informed the neighbor that it was an illegal driveway for which a permit would not have been issued.

Mr. Hart stated that he was concerned that the condition of the neighbor's property did not justify why the applicant needed to erect an 8.0 foot high fence and therefore, asked staff to investigate if the property was in violation.

Ms. Reid stated that they had received numerous threats from their neighbors. Mr. Hart stated that this was the Board's request and asked staff if there was a current permit which corresponded to the current activity on the property. Ms. Stanfield stated that staff would have an inspector review the property again.

Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The public hearing was deferred for decision to February 11, 2003 at 9:00 a.m.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RODGER G. ASHLEY, VC 2002-BR-096 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. (Admin moved from 9/10/02 and 11/12/02 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. Rodger Ashley, 5401 Sideburn Road, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested construction of a carport 5.5 feet from the side lot line, such that the side yards totaled 16.3 feet. The Zoning Ordinance requires a minimum side yard of 24.0 feet; therefore, a variance of 2.7 feet was requested.

Mr. Ashley presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was purchased in 1972 and the request for the covered carport was because the driveway slanted and the house faced the west. Mr. Ashley said the request was also for safety issues because of snow and ice. He stated that there was adequate space for an additional carport and therefore, asked for the Board's approval of the application.

Mr. Hart asked if a previous variance was denied. Ms. Stanfield stated that the Board had denied a previous request that also included a second story.

Mr. Ashley stated that the previous request was for a carport with a closet coming off the bedroom on the second floor.

Mr. Ribble asked if there was an existing garage. Mr. Ashley stated that they had a two car garage; however, they owned three vehicles.

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



~ ~ ~ January 14, 2003, RODGER G. ASHLEY, VC 2002-BR-096, continued from Page 176

Mr. Ribble moved to deny VC 2002-BR-096 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

RODGER G. ASHLEY, VC 2002-BR-096 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. (Admin moved from 9/10/02 and 11/12/02 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 January 14, 2003; and

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

1. The applicant is the owner of the land.
2. The property has topographical issues.
3. The applicant has not satisfied the requirements of a variance application.
4. The applicant currently has a two car garage and the application requested is a matter of 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:

~ ~ ~ January 14, 2003, RODGER G. ASHLEY, VC 2002-BR-096, continued from Page 177

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. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 2003.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

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. (Def. from 10/1/02 per appl req.)

Chairman DiGiulian noted that the appellants requested a deferral to June 3, 2003 at 9:30 a.m.

Charles Sickels, Agent, requested deferral of the appeal application.

Kevin Guinaw, Chief, Applications Acceptance and Proffer Interpretation Branch, concurred with the deferral request.

Ms. Gibb moved to defer A 2002-HM-021 to June 3, 2003 at 9:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ January 14, 2003, (Tape 1), Scheduled case of:

9:30 A.M. MARVIN D. AND JEAN P. TOOMBS, A 2002-MA-022 and A 2002-MA-023 Appls. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing tenants to operate a Vehicle Major Service Establishment and a Truck Rental Establishment in the C-8 District without special exception approval and without valid Non-Residential Use Permits in violation of Zoning Ordinance provisions. Located at 5710 Center La. on approx. 23,352 sq. ft. of land zoned C-8, CRD, HC and SC. Mason District. Tax Map 61-2 ((20)) 16. (Concurrent with A 2002-MA-024). (Admin moved from 10/22/02 per appl. req) (Def from 11/5/02)

9:30 A.M. MARVIN D. AND JEAN P. TOOMBS, A 2002-MA-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a tenant to operate a Vehicle Major Service Establishment in the C-8 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 5710 Center La. on approx. 19,039 sq. ft. of land zoned C-8, CRD, HC and SC. Mason District. Tax Map 61-2 ((20)) 17A. (Concurrent with A 2002-MA-022 and A 2002-MA-023). (Admin moved from 10/22/02 per appl. req) (Def from 11/5/02)

Chairman DiGiulian noted that the appellants requested a withdrawal of the appeal applications.

William Shoup, Zoning Administration Division, stated that the current appellants were in the process of selling the property. He stated that it was anticipated that the sale would have been completed by the date

~ ~ ~ January 14, 2003, MARVIN D. AND JEAN P. TOOMBS, A 2002-MA-022, A 2002-MA-023, and A 2002-MA-024, continued from Page 178

of the public hearing; however, due to complications, staff recommended deferral of the above referenced appeal applications to January 28, 2003, at which time the applications would more than likely be withdrawn.

Ms. Gibb moved to defer A 2002-MA-022, A 2002-MA-023 and A 2002-MA-024 to January 28, 2003, at 9:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ January 14, 2003, (Tape 1), After Agenda Item:

Consideration of Acceptance  
Appeal filed by Peter W. and Leslie J. Berk

Mr. Hart recused himself from the application.

Jayne Collins, Assistant to the Zoning Administrator, Zoning Administration Division, presented staff's comments regarding the acceptance of the appeal. She stated that it was staff's judgement that the appeal application did not constitute a proper appeal in accordance with the provisions of the Zoning Ordinance. She stated that the appellants' indicated they were appealing the decision of a staff member of the Department of Public Works and Environmental Services (DPWES). She stated that the subject Lot 7 was not a legal lot. In a written comment dated November 5, 2002, the Site Reviewer, Dennis Hannon, determined that the lot was not a legal lot because at the time the land was divided to create the lot, County approval of a plat showing the division of land was required. Ms. Collins stated that this determination was under the application of the Subdivision Ordinance and therefore, could not be appealed to the Board of Zoning Appeals. She said the issue on appeal did not relate to the administration or enforcement of the Zoning Ordinance.

Mr. Pammel asked if the appellants' agent had requested a written determination from the Zoning Administrator, in which case, that could be appealed to the Board of Zoning Appeals for a determination.

Ms. Collins stated that Lynne Strobel, Agent, had requested a determination from Zoning Administration and stated that they had responded in a letter agreeing with DPWES that the lot apparently was not subdivided in accordance with the subdivision regulations.

William Shoup, Zoning Administration Division, stated that staff would review the appeal once filed because staff was taking a harder stance on buildable lot appeals. He stated that in effect what was being appealed was a determination made under the Subdivision Ordinance, which was not a proper appeal before the Board of Zoning Appeals; however, he stated that Ms. Strobel could file an appeal against that determination and staff would bring that appeal before the Board for final determination as well.

Mr. Pammel asked that if lots existed, which were purchased in good faith, and owners applied for a building permit, which was denied, the determination then was that it was not a buildable lot because it was never recorded. He asked where were people to go for a determination.

Mr. Shoup stated that there were no appeal provisions under the Subdivision Ordinance and nothing in that Ordinance suggested that the appeal come before the Board of Zoning Appeals, but instead, the Circuit Court.

Bruce Nassimbeni, DPWES, stated that the current recourse was through the Circuit Court and that the Board of Supervisors had tasked staff to come up with recommendations to remedy legal lot issues. Mr. Nassimbeni stated that staff proposed options to the Board of Supervisors, of which there was a public hearing date set in the Spring, that the Board would make recommendations to change the Subdivision provisions to allow grandfathering of illegal lots.

Lynne Strobel, Agent representing the appellant came forward stating that the property owner had experienced a great deal of frustration and delay in the process. Ms. Strobel reviewed the filing history of the appeal with the Board. She stated that the appellants had been attempting to build a house on the lot since

~ ~ ~ January 14, 2003, AFTER AGENDA ITEMS, continued from Page 179

May, 2001. She said the property was purchased with an existing home, which had been built in 1953. She stated that the parcel was a little larger than 4 acres and had been the same size since 1953. An addition was added in 1980 for which the owner at that time received a properly issued County building permit. Ms. Strobel stated that Mr. Berk tried to receive approval of a variance which did not go forward. She stated that Mr. Berk received a demolition permit on May 28, 2002, and was never made aware that there was a potential problem with demolishing the existing home, which was done in April 2002. Ms. Strobel said when Mr. Berk went to the County for a building permit, he was issued a note which stated that the lot was not legal and a home could not be built. Ms. Strobel stated that the property had been taxed as a residence and a building permit was issued for an addition. Ms. Strobel asked for a quick turnaround of the appeal to be heard before the Board of Zoning Appeals.

Ms. Gibb questioned what was proposed before the Board of Supervisors. Mr. Nassimbeni stated that lots created pre 1947 would be deemed legal and lots created between 1947 and 1975 or 1982 would be validated under the subdivision provisions if they met the Zoning Ordinance requirements at the time they were created. He stated that presently the Subdivision Ordinance allowed validation of up to two illegal lots created and the new option would allow any lot to be validated, which should be a benefit to many people.

Ms. Gibb stated that she was under the impression that when the Board had overruled the Zoning Administrator regarding a legal lot issue, that the appellant then had difficulty receiving a building permit. Mr. Shoup stated that whenever the Zoning Administrator was overruled, those lots would then be deemed buildable and should receive building permits.

Mr. Shoup stated that it was not appropriate that a determination made under the Subdivision Ordinance come before the Board of Zoning Appeals for a decision to be overruled.

The Board members expressed their concern regarding the property having a home, being taxed, issued permits for additions and then demolished.

The Board discussed at length the issue of accepting the appeal and bringing it before the Board.

Mr. Nassimbeni stated that nothing within Chapter 112 of the Ordinance was considered, only Chapter 101.

Mr. Pammel moved to accept the recommendation to the Zoning Administrator, regarding subdivision of legality as it related to a grading plan submission. The motion failed for the lack of a second.

Mr. Kelley moved that the Board accept the appeal of Peter W. and Leslie Berk. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the case. Mr. Hammack was absent from the meeting.

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~ ~ ~ January 14, 2003, (Tape 2), After Agenda Item:

Consideration of Acceptance  
Appeal filed by William J. Hilbers

Diane Johnson-Quinn, Senior Assistant to the Zoning Administrator, Zoning Administration Division, presented staff's comments regarding the acceptance of the appeal. She stated that it was staff's judgement that the appeal application did not constitute a proper appeal in accordance with the provisions of the Zoning Ordinance. She stated that the appellants indicated they were appealing the decision of a staff member of the Department of Public Works and Environmental Services (DPWES). Ms. Johnson-Quinn stated that appellants indicated that the nature of the appeal was a buildable lot decision; however, the decision of DPWES only referenced the non-compliance of the lot with the Subdivision Ordinance; therefore, staff believed that the application was not to be appealed by the Board of Zoning Appeals and asked the Board to deny the acceptance of the appeal application.

William Baskin, agent representing the appellant, stated that the property owner received a letter from DPWES indicating that the lot was not legally subdivided, and because of time constraints, he filed an appeal

~ ~ ~ January 14, 2003, AFTER AGENDA ITEMS, continued from Page 180

application to the Zoning Administrator requesting the Board to accept the application.

Mr. Hart questioned staff, in length, regarding procedures when responding to appeal applicants regarding Subdivision and Zoning Ordinances provisions.

Mr. Shoup stated that there were no appeal provisions under the Subdivision Ordinance and nothing in that Ordinance suggested the appeal come before the Board of Zoning Appeals, but instead, the Circuit Court. Mr. Shoup stated that the Zoning Administrator was not permitted to make a determination under the Subdivision Ordinance and therefore, an appeal of a DPWES determination regarding the Subdivision Ordinance could not come before the Board of Zoning Appeals, but must go to the Circuit Court.

Bruce Nassimbeni, DPWES, stated, for clarification, that the Zoning Administration office made a determination under the Zoning Ordinance regarding the buildable capabilities of a lot which was dealt with under Section 2-405 of the Ordinance when it was created; whereas, DPWES makes a determination on the legality of the lot, which was strictly a Chapter 101, Subdivision provision.

Mr. Hart questioned at what level the responsibility shifted to determine that this type of appeal was not to come to the Board of Zoning Appeals any longer.

Mr. Shoup stated that the Zoning Administrator became very uncomfortable making decisions under the Subdivision Ordinance and, therefore, shifted that responsibility to DPWES.

Ms. Gibb questioned how staff determined if a lot was a legal lot, especially regarding title issues. Mr. Nassimbeni stated that there was one individual who addressed the buildable lot issue requests, by researching the CARS system and referencing Deed Book and Page, every transfer of property, back to 1929 when the first Subdivision Ordinance was in effect.

The Board discussed at length issues of legality regarding the Zoning Ordinance.

Ms. Gibb moved that the Board accept the appeal of William Hilbers. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Mr. Pammel asked for guidance from the County Attorney regarding the Board of Zoning Appeals making determinations under the Subdivision Ordinance, which preceeded the Zoning Ordinance by 13 years, and whether the BZA had authority under that Ordinance.

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~ ~ ~ January 14, 2003, (Tape 2), After Agenda Item:

Approval of January 7, 2003 Resolutions

Mr. Pammel moved to approve the January 7, 2003 Resolutions. Mr. Kelley 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 11:06 a.m.

Minutes by: Deborah A. Hedrick

Approved on: September 16, 2003

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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, January 21, 2003. 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.

~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M.       SHAISTA & NASR CHAUDHRY, VC 2002-HM-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 2700 Floris La. on approx. 26,239 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 25-1 ((16)) 1. (def from 12/10/02 for dec 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. Shaista Chaudhry, 2700 Floris Lane, Oak Hill, Virginia, replied that it was.

Ms. Chaudhry indicated that Charles Radigan, Agent would give the presentation. Mr. Radigan stated that he had submitted a supplemental affidavit. He said the house was higher than the road and the applicant had problems with trespassers on the property and noise. Mr. Radigan stated that the fence met sight distance requirements. He said the application met the requirements for a variance.

Mr. Hart asked about the fence contractor. Mr. Radigan stated that the fence was built by someone who was building other fences in the neighborhood and the applicants had no idea the fence was in violation of the Zoning Ordinance.

Mr. Hart stated that the most logical place for the fence was on top of the berm. He asked why the applicants did not build a smaller fence on the berm. Mr. Radigan stated that the applicant had planted several trees on the property which they would lose if the fence was built on the berm. He said they would also lose a substantial amount of footage of the yard.

Mr. Hammack asked if the applicants would be willing to move the fence to the berm. Mr. Radigan replied that the applicants could not afford to move the fence and they needed protection from West Ox Road.

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

Mr. Hammack stated that he could not support the application for the fence to be on the property line at the height in which it was presented. He noted that he had visited the site and had looked at the fence and the impact on the community. He stated that there was precedent for fences in front yards of lesser height, pulled back and located on berms or somewhere inside the property lines. He said he was particularly impressed by the fence at 2700 Rogers, which was integrated into vegetation and appeared to protect the house, but was not high and obtrusive.

Mr. Hammack stated that the applicants had not satisfied the nine required standards for variance applications. He said that granting the variance as it was applied for would not be in character with the zoning district or in harmony with the intended spirit and purpose of the Zoning Ordinance. He said there was not a clearly demonstrated hardship approaching confiscation as distinguished from a special privilege.

Mr. Hammack moved to approve in part VC 2002-HM-155 contingent on a revised plat being submitted with the fence, not to exceed six feet in height, moved back to the center line of the berm along West Ox Road and an equidistance from the road all the way around.

Mr. Pammel seconded the motion.

Mr. Kelley said the fence was an eyesore and that he would not support the motion.

Mr. Pammel stated that there was a consistent trend of six-foot fences on berms going from the subject property to the southeast, so the pattern had already been set. He said the subject property did not fit with the pattern, but would fit if a six-foot fence was erected on the berm.

~ ~ ~ January 21, 2003, SHAISTA & NASR CHAUDHRY, VC 2002-HM-155, continued from Page 183

Mr. Hart indicated he did not like the existing fence, but the applicants had shown they were entitled to some relief. He said a resolution where the fence would be pulled back and located on top of the berm along West Ox Road was a reasonable compromise. He noted that if the fence was placed on the berm, it would give more privacy and would be hidden by some of the landscaping. Mr. Hart said that pulling it away from the entrance feature would be a visual improvement for the neighbors and would give the applicants some relief from the busy street.

Mr. Pammel said West Ox Road was a heavily traveled road. He indicated that he had taken traffic counts and had found there to be approximately 35 vehicles passing each five minutes, which would average out to approximately 8,000 vehicles per day.

Chairman DiGiulian called for the vote. The motion carried by a vote of 4-2. Chairman DiGiulian and Mr. Kelley voted against the motion. Mr. Ribble was not present for the vote.

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~ ~ ~ January 21, 2003, (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 and 10/22/02) (def from 11/12/02 for dec. only)

Mr. Hart gave a disclosure but indicated it would not affect his ability to 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. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Ms. Strobel stated the associated special exception application was deferred for decision to February 23, 2003, by the Board of Supervisors.

Mr. Pammel moved to defer VC 2002-DR-057 to March 4, 2003. 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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~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ALI & KAMRAN GERAYLI, SP 2002-HM-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.6 ft. from side lot line and 8.7 ft. from rear lot line. Located at 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with VC 2002-HM-147). (Admin moved from 11/26/02 for notices)

9:00 A.M. ALI & KAMRAN GERAYLI, VC 2002-HM-147 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 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with SP 2002-HM-050). (Admin moved from 11/26/02 for notices)

The applicant was not present at the time the case was called. The case was moved to the end of the agenda.

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~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KIMBERLY V. COPE, SP 2002-MA-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.9 ft. and eave 0.0 ft. from side lot line. Located at 7017 Donna Ci. on approx. 10,922 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((20)) 330.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kimberly Cope, 7017 Donna Circle, Annandale, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, 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 garage addition to remain 0.9 feet from the side lot line and the eave of the addition to remain 0.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 11.1 feet was requested. The eave is permitted to extend 3 feet into the side yard; therefore a modification of 9.0 feet was requested.

Ms. Cope presented the request as outlined in the statement of justification submitted with the application. She said the structure was built to house a truck that was used for work purposes.

Chairman DiGiulian asked whether the applicant had obtained a building permit. Ms. Cope replied no.

Mr. Hammack asked if the construction was done by the applicant. Ms. Cope replied yes, that it had been built by her fiancé.

Mr. Hart asked if the builder was a licensed contractor. Ms. Cope replied yes, that he had a Class C license.

Mr. Hart asked if there was a foundation under the wall and if the structure was complete. Ms. Cope replied there was a foundation under the wall; however, the structure was not complete.

Mr. Hart asked if there was a reason that the structure was built so close to the street. Ms. Cope responded that they were trying to keep it in line with the house and in character with the neighborhood.

Mr. Hart stated that he was having trouble determining if the applicants had made the error in good faith.

Ken Reese, 7017 Donna Circle, came forward stating that they had approached the neighbors about the structure. He said the original plan was to just build a carport roof, but the vehicle was 22 feet long and could not fit.

Mr. Hart asked if the size could be reduced. Mr. Reese stated that he could remove 2 feet in the back because there was a concrete slab for drainage.

Mr. Hart asked if a variance was needed for the concrete slab. Susan Langdon, Chief, Special Permit and Variance Branch, replied that a variance was not necessary.

Mr. Hammack asked if the truck was in violation for being parked in a residential area. Paul McAdam, Senior Zoning Inspector, Zoning Enforcement Branch, replied that the truck was not in violation.

Ms. Gibb asked if there would be a garage door. Mr. Reese said his objective was to make the structure as aesthetically pleasing as possible.

Chairman DiGiulian called for speakers.

John Crawford, 7022 Donna Circle, came forward to speak in support of the application. He said the applicant had made every attempt to get the truck off the street.

Rolland Felton, 7023 Donna Circle, came forward to speak in support of the application. He stated that the applicants were good neighbors and they had made improvements to the house. Mr. Felton said the structure would be consistent with the neighborhood.

Teresa Knoll, 7014 Donna Circle, came forward to speak in opposition. She said the structure was not in

~ ~ ~ January 21, 2003, KIMBERLY V. COPE, SP 2002-MA-059, continued from Page 185

character with the neighborhood. Ms. Knoll said she was concerned about appearance and the intended use of the structure. She said the previous speakers could not see the structure but that she could. Ms. Knoll said the truck was never parked in the structure.

Ms. Cope stated in her rebuttal that she did not know that Ms. Knoll could see the structure. She said the driveway had to be completed before they could park the truck in the structure. Ms. Cope said she was willing to work towards an amicable solution.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that this was a difficult case. He said after review of the applicable standards for a special permit in error he concluded that the structure as applied for would not satisfy the standards. Mr. Hart said the lot was strange and had topography issues. He said the applicant had come far enough along with the project that there would be a significant hardship. Mr. Hart said he would suggest that the application be approved in part with the modification such that the garage wall at the back corner would come 2.9 feet off of the side line with a maximum overhang of 1.0 feet. He said this was a difficult situation as far as compatibility because virtually all of the homes in the neighborhood were masonry and all the same color of red brick and this structure was not.

Mr. Kelley seconded the motion for the purposes of discussion.

Ms. Gibb stated that it was good to get the truck off the street, but the structure would be there long after the truck was gone. She said she had a problem with the application and the structure needed a door and the retaining wall needed to be inspected and get a building permit if it was necessary. Ms. Gibb said the structure seemed to be very large.

Mr. Kelley said he shared some of the same concerns Ms. Gibb expressed.

Mr. Hart said he would accept Ms. Gibb's requests as a friendly amendment to the motion.

Mr. Hammack said he had difficulty supporting the motion. He said the pie shape of the lot would justify some form of variance but he felt 2.9 feet was still close to the property line. Mr. Hammack said he would prefer that the application be deferred and asked the applicant to inform the BZA of what they would do to bring the structure into compliance rather than have the BZA impose conditions on them. He said it was out of character with the neighborhood, that there were all kinds of issues associated with the structure and it would cause a detrimental impact on the neighborhood.

Mr. Pammel said he agreed with Mr. Hammack comments. He said the applicants should have hired an architect to make it compatible with the existing house.

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## COUNTY OF FAIRFAX, VIRGINIA

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

KIMBERLY V. COPE, SP 2002-MA-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.9 ft. and eave 0.0 ft. from side lot line. Located at 7017 Donna Ci. on approx. 10,922 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((20)) 330. 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 21, 2003; and

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

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

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

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

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

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

- 1. This special permit is approved for the location of the addition shown on the plat prepared by Laura Lee Scott Surveys, Inc. dated September 16, 2002, as revised through October 7, 2002, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained within 30 days of approval of this special permit 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

Mr. Kelley seconded the motion which **FAILED\*** by a vote of 2-5. Chairman DiGiulian, Mr. Hammack, Mr. Pammel, Ms. Gibb and Mr. Ribble voted against the motion. Mr. Pammel moved to waive the 12-month limitation for refiling 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 January 29, 2003. This date shall be deemed to be the final decision date of this special permit.

\*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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~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. R.B. WAYLAND, JR., VC 2002-BR-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.8 ft. from front lot line of a corner lot. Located at 5202 Garner St. on approx. 13,856 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (36) 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. R. B. Wayland, 5202 Garner Street, Springfield, Virginia, replied that it was.

Lindsay Shulenberger, 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 two-story addition, to be located 20.8 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 9.2 feet was requested.

Mr. Wayland presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to construct a 2-car garage with family room and for an additional bedroom.

Mr. Hammack asked if there would be another driveway constructed. Mr. Wayland stated that there would only be one entrance.

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

Mr. Ribble moved to approve VC 2002-BR-186 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

R.B. WAYLAND, JR., VC 2002-BR-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.8 ft. from front lot line of a corner lot. Located at 5202 Garner St. on approx. 13,856 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (36) 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 21, 2003; 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 and 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

~ ~ ~ January 21, 2003, R.B. WAYLAND, JR., VC 2002-BR-186, continued from Page 188

adjacent to the subject property.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Gavin & Associates dated November 11, 1999, as revised through October 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. Kelley 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 January 29, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES MCHENRY, VC 2002-MV-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height in front yard of a corner lot and accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 2109 Stirrup La. on approx. 16,236 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102- 3 ((10)) (7) 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. James McHenry, 2109 Stirrup Lane, Alexandria, Virginia,

replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a fence greater than 4.0 feet in height in a front yard of a corner lot. The applicant also requested an accessory structure in the front yard of a lot containing less than 36,000 square feet. A maximum fence height of 4.0 feet is required; therefore, a variance of 2.0 feet was requested for the fence.

Mr. McHenry presented the variance request as outlined in the statement of justification submitted with the application. He said the house was on a corner lot and needed a 6-foot fence to provide safety for his children to play in the yard. Mr. McHenry stated that there was an easement between the yard and the road. He said he met with the community and agreed to move the fence back to the middle of the side of the house. Mr. McHenry presented photographs of the property. He said the fence did not affect sight distance.

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

Ms. Gibb moved to approve VC 2002-MV-174 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES MCHENRY, VC 2002-MV-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height in front yard of a corner lot and accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 2109 Stirrup La. on approx. 16,236 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102- 3 ((10)) (7) 1. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 21, 2003; 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. A fence 2.0 feet higher than the Ordinance allows is appropriate for this location.
4. The lot has 2 front yards and is adequately landscaped.
5. The fence will not affect sight distance and is aesthetically pleasing.
6. The shed will be adequately landscaped and is appropriate for this 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

~ ~ ~ January 21, 2003, JAMES MCHENRY, VC 2002-MV-174, continued from Page 190

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 shed, shown on the plat prepared by Bryant L. Robinson, dated September 23, 2002, submitted with this application and is not transferable to other land.
2. Any required Building Permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. Notwithstanding what is shown on the plat, the fence will begin at the midpoint of the house.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 29, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MATTHEW IRWIN, SP 2002-MV-060 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 2226 William & Mary Dr. on approx. 12,681 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((9)) (B) 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. Matthew Irwin, 2226 William and Mary 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 for a home professional office for a doctor's office to be located in a proposed

~ ~ ~ January 21, 2003, MATTHEW IRWIN, SP 2002-MV-060, continued from Page 191

addition that would be situated in the rear of the existing dwelling. The applicant proposed a maximum of 12 client visits per day between 8:00 a.m. and 5:00 p.m. with one employee serving as an office manager to be onsite in addition to the doctor. The dwelling currently had one offsite parking space. The applicant proposed to add four additional parking spaces in the front and side yard, which would share a single curb cut. Staff recommended denial of the application based upon the proposed usage being too intense for the lot size and available parking. Staff felt that the addition of parking spaces as proposed in the application would result in a commercial rather than residential appearance.

Mr. Hart inquired of staff whether the Chesapeake Bay Act makes a distinction between a minor addition to a residential structure for a residential use, like a sunroom, and a special permit use, like a doctor's office.

Ms. Stanfield said that environmental staff felt that the use of the addition as a home professional office might be more intense than use as a sunroom, but the Department of Public Works and Environmental Services (DPWES) would consider it as simply an addition to a residential lot.

Mr. Irwin presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Irwin stated he had contacted eight immediate neighbors regarding the proposed addition, of which seven replied. He stated the neighbors were supportive of his plans and that he wouldn't have even applied if he felt the neighbors were not in support. Mr. Irwin stated his plan was to start out slow, seeing one or two patients a day, starting in July of 2004, after completing his residency. He explained that he would initially construct a portion of the proposed parking and add the remaining portions as needed. Mr. Irwin said if he hired an employee, he would require them to use public transportation. He explained that he would not have a managed care practice in the home office and that he also planned to do home visits. Mr. Irwin said he had some additions to make to his original plan which he felt dealt with the issues raised by one neighbor who was in opposition to his application. He said that he had a new neighbor that had moved in after his application process had been begun, who he had since contacted and advised of his plans, but he said they hadn't responded to him as far as giving their opinion. Mr. Irwin said he would address the Resource Protection Area with the appropriate environmental oversight people and that they had modeled their proposed addition after a similar one in the neighborhood.

Mr. Kelley asked the applicant whether he was planning to specialize. Mr. Irwin replied that he was now in a family practice residency and that he refers to his personal specialization as health promotion and explained that he preferred not to prescribe a lot of medicines and liked to have longer visits with patients to try to discover the underlying causes of medical problems rather than prescribing a "pill for an ill."

Mr. Kelley asked the applicant if he planned to use Mount Vernon Hospital. Mr. Irwin replied that was his intention, but he hadn't researched yet whether he could follow patients there if he was not in a managed plan and may have to refer patients to other providers to have them follow their hospital care.

Mr. Kelley asked the applicant how long he had lived on the subject property. Mr. Irwin replied that his family moved into the general neighborhood in 1975 and that he lived there until 1983 when he left for college. He moved back to the general area in 1995 and into the subject property in either 1998 or 1999.

Mr. Kelley remarked that the property was about a mile from the hospital and asked the applicant about obtaining an office near the hospital grounds. Mr. Irwin said he preferred the home office, but that he would do that if he didn't have another option or if his practice outgrew the home office.

Mr. Hammack asked the applicant how he planned to deal with emergencies and patients who just showed up. Mr. Irwin replied that he expected most people would call first in an emergency situation, and if it was urgent, they would go to the emergency room or urgent care facility.

Mr. Hart asked the applicant about the location of the entrance to the office and which level the door was on. Mr. Irwin said the door was in the back on the basement level, which was a walk-out. Mr. Hart asked the applicant to explain the walkway and steps to the office entrance. Mr. Irwin explained how the entrance could be sloped to avoid steps, but would require small retaining walls along part of the slope. Mr. Hart asked the applicant if an engineer or architect had been consulted regarding the grade of the slope. Mr. Irwin said no.

Mr. Hart asked the applicant whether deliveries would be made to the office. Mr. Irwin said no.



~ ~ ~ January 21, 2003, MATTHEW IRWIN, SP 2002-MV-060, continued from Page 192

Mr. Hart asked whether the applicant had seen the plat with the walkway on it, if staff had asked for that plat, and who put it on there. Mr. Irwin said he hadn't seen it prior, that staff asked for it, and that Alexandria Surveys had put the walkway on the plat based on information he had given them over the phone.

Mr. Hart asked the applicant to clarify what was meant by the term "two-story addition." Mr. Irwin replied that the upstairs story was part of the house with the downstairs being the office.

Chairman DiGiulian called for speakers.

Barbara Deal, 8215 Crown Court Road, came forward to speak in opposition to the application. She stated she had lived in Williamsburg Manor for 32 years. Ms. Deal said she did not think the applicant's property was conducive to this type of use and she felt medical practices should not be inside residential areas and rather on the fringes. She said she was neither for nor against it, but she believed this would be like a Pandora's Box and once opened, could not be closed. Ms. Deal said there was a recent traffic control issue addressed in the neighborhood with regard to William and Mary Drive, which is like a roller coaster causing safety issues with people seeing crosswalks and opposing traffic as they approach. She stated that the issue came up based on the rejuvenation of the neighborhood with many new children, 60% of which lived on entrance streets.

Denise Theunissen, 2224 William & Mary Drive, came forward to speak in opposition to the application. Ms. Theunissen expressed her concerns regarding traffic. She stated she had recently moved into the property next-door to the applicant, and if she had known there would be a home office next door, she probably would not have moved there. Ms. Theunissen said she would feel uncomfortable having her children play outside with the traffic with misdirected people pulling into her driveway or parking in front of her house, and sick people coming and going. She said she originally thought the permit would be in effect for a limited period of time with a review to determine if it would be extended. She said she called the County to get clarification on the time limitation and was told that once someone gets a permit for rezoning, it would be there forever. Ms. Theunissen said she was concerned that there would be no way of reversing things and was concerned that no one would be controlling the number of patients seen and it might increase in the future.

Mr. Irwin stated in his rebuttal that if his neighbors were firmly against an office as a final decision, he would withdraw his application. He said that he had been given the information that there was a five-year review process from Chairman DiGiulian and that's why he used that term in his statements. Mr. Irwin said he received a message recently from Ms. Stanfield saying there is no required five-year review. He said that he thought the Board had the option of requiring a five-year review. Mr. Irwin said he wanted to clarify that he wasn't trying to hide anything or create falsehoods. He also stated that he was flexible on the maximum amount of people seen at the office, if that was an issue.

Mr. Ribble asked the applicant if he wanted to withdraw his application. Mr. Irwin said he wished he'd had a chance to speak with the Theunissens at length. He asked the Board if there is a five-year review and was told by Mr. Ribble that, yes, if the Board put it on the approval. Mr. Irwin said he wouldn't withdraw the application, but he would request a five-year review.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to deny SP 2002-MV-060 for the reasons noted in the Resolution. He said he had thought about putting a five-year term on it, but that he thought that would lead to problems down the road for the applicant and disruption to potential patients. Mr. Kelley commented that within a mile or a mile and a half there were home professional condo associations that he felt the applicant could find some space in.

Mr. Ribble seconded the motion.

Chairman DiGiulian asked for discussion.

Ms. Gibb said that although medical home professional offices would be welcome in many situations, it appeared it would not be right in this neighborhood.

Mr. Hart said he agreed that there are neighborhoods where this might work more comfortably, but was too tight and intense for this neighborhood. He said the rationale in the staff report followed along with that. //

~ ~ ~ January 21, 2003, MATTHEW IRWIN, SP 2002-MV-060, continued from Page 193

**COUNTY OF FAIRFAX, VIRGINIA**

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

MATTHEW IRWIN, SP 2002-MV-060 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 2226 William & Mary Dr. on approx. 12,681 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((9)) (B) 4. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 21, 2003; and

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

1. The applicant is the owner of the land.
2. If a 5-year term were put on the application, it could lead to problems for the applicant down the road and could be disruptive for the patients.
3. Approximately 1 mile from the subject property is a professional condominium association and other areas where the applicant could lease space.

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). 8-907 of the Zoning Ordinance.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 29, 2003.

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~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:30 A.M. HONG KI KIM, A 2002-MV-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that repair of fire damage to existing service station is deemed to be replacement and, therefore, special exception approval would be required under Zoning Ordinance provisions. Located at 6817 Richmond Hwy. on approx. 15,553 sq. ft. of land zoned C-8, HC and CRD. Mt. Vernon District. Tax Map 93-1 ((18)) (A) 1. (admin moved from 11/19/02)

Chairman DiGiulian noted that A 2002-MV-029 had been administratively moved to March 11, 2003.

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~ ~ ~ January 21, 2003, (Tape 2), Scheduled case of:

9:30 A.M. MCDONALD'S CORPORATION, A 2002-DR-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed and is operating a freestanding video DVD vending machine which is not in substantial conformance with the development conditions of Special Exception Amendment SEA 86-D-076-2 in violation of Zoning Ordinance provisions. Located at 6920 Old Dominion Dr. on approx. 42,759 sq. ft. of land zoned C-5, HC, SC and CRD. Dranesville District. Tax Map 30-2 ((1)) 1D.

~ ~ ~ January 21, 2003, MCDONALD'S CORPORATION, A 2002-DR-034, continued from Page 194

Diane Johnson-Quinn, Staff Coordinator, made staff's presentation as contained in the staff report. The appellant requested an appeal of a determination that the appellant had installed and was operating a freestanding DVD vending machine which was not in substantial conformance with the development conditions of SEA 86-D-076-2, in violation of Zoning Ordinance provisions.

Ms. Johnson-Quinn stated that the property contained close to an acre and was developed with a McDonald's fast food restaurant, with a drive-through window, all of which is subject to the Special Exception Amendment, which was approved by the Board of Supervisors on 3/14/98. She said a copy of the development conditions and plat associated with the SEA were contained in the Staff Report as Attachment 3.

Ms. Johnson-Quinn noted that Condition 4 sets forth limitations on the hours of operation for the restaurant, 6:00 a.m. to 11:30 p.m. on Sunday through Thursday and 6:00 a.m. to 12:30 a.m. on Friday and Saturday.

Ms. Johnson-Quinn stated that the appellant's attorney had inquired about installing a DVD vending machine outside of the restaurant. After coordination with the Zoning Evaluation Division, staff had advised the appellant's attorney by letter dated 8/21/02 that the machine would be considered to be an accessory use to the restaurant if it was in substantial conformance with the conditions of the SEA. The letter specifically noted that the outside location of the machine was not in substantial conformance with Condition 4, and staff suggested moving the machine indoors.

Ms. Johnson-Quinn said, despite being given this information, the appellant installed the DVD machine outside the restaurant. She said the machine was approximately seven feet tall, four to five feet wide and deep, brightly colored with the words "tiktok DVD shop" written on the side of it. Ms. Johnson-Quinn said that upon receipt of a complaint following an inspection, a Notice of Violation was issued, and this appeal of the NOV was submitted by the appellant.

Ms. Johnson-Quinn stated that the appellant did not dispute the claim in the NOV that the machine had been installed and was being operated or that the site and the machine were subject to the conditions of the SEA. She said they did suggest that they were not violating the limits of the hours of operation because they installed a "barrier screen" on the machine to limit the hours of access to the machine by their customers. A photograph of the hours listed on the screen was submitted by the appellant and was in Attachment 1 of the Staff Report.

Ms. Johnson-Quinn said that it is staff's position the screen did not adequately restrict use of the machine, that it was merely a device similar to a window shade that could be lifted by a customer. She also said the hours listed on the screen were 5:00 a.m. to 1:00 a.m., Sunday through Thursday, and 5:00 a.m. to 2:00 a.m., Friday and Saturday. These were not in conformance with the hours listed in Condition 4.

Ms. Johnson-Quinn stated that it was the understanding of staff that the machine was in the process of being relocated to another location outside of the County. She said that as of last week, most of the contents and some of the workings of the machine had been removed and just the outer casing of the machine had been left. She stated that the appellant's attorney advised that they wished to pursue the appeal to obtain the Board of Zoning Appeals' decision on the matter.

Ms. Johnson-Quinn said that the appellant also asserted that the Zoning Administrator was a quasi-judicial official appointed by the Circuit Court, and that under State Code, only she had the authority to enforce the Zoning Ordinance and that the inspector did not have the authority to issue the Notice of Violation. Ms. Johnson-Quinn stated that staff believes that was wrong.

Ms. Johnson-Quinn said it was clear that the DVD vending machine has been installed on the property, outside of the restaurant, where it was available 24 hours a day, in violation of Condition 4 of the SEA, thus being a violation of the Zoning Ordinance. She requested the Board uphold the determination of the Zoning Administrator.

Mr. Hart said he had gone out to look at the machine and that there were differences between the signage on the machine he had seen and what was shown in the staff's photographs. He asked if what he saw was a different object than what the letter was about. Ms. Johnson-Quinn explained that it was the same machine; however, the photographs had been taken at different times.

Mr. Hart said because the photographs showed a sign on the machine indicating 24 hours, the signage didn't agree with the limited access hours for the machine in the SEA. He asked if the feature that had the 24 hours on it was within the scope of what the appeal was about or was something else. Ms. Johnson-Quinn said the initial NOV indicated that it was believed the machine was being operated 24 hours a day even before the 24-hour sign appeared because the screening on the machine that had the hours of limitation on it could be moved and did not secure that machine.

Ms. Johnson-Quinn asked Mr. Hart if his question was whether the violation had worsened during the process. Mr. Hart replied no, that his question was whether staff's position was that the object was in violation regarding the hours of operation regardless of the 24-hour sign. Ms. Johnson-Quinn said that was correct.

Mr. Hart asked, if the machine was going to be removed, wouldn't that clear up the violation and why would the Board be doing anything further. Ms. Johnson-Quinn replied that as of the hearing date, the machine had not been removed in its entirety and the shell remained. She said that if it had been completely removed, the violation would be cleared, and staff would be requesting of the Board that the matter be dismissed, but that was not the case.

Mr. Kelley said it appeared the case was moot and he did not believe the Board should be giving advisory opinions. He asked Mary Theresa Flynn, the applicant's agent, if the machine was going to be removed because if it was, he would make a motion to dismiss the case. Ms. Flynn stated it was not moot at all because they wanted to move it back. She said they were taking it out at the request of the County to resolve this issue, but before moving it back, they wanted the question resolved as far as whether the machine could be at the location if they made the machine operable for the same hours as the restaurant. She stated that they could cut off the power from the machine during the hours the restaurant was closed.

Mr. Kelley said he didn't understand Ms. Flynn's answer, that it sounded to him like they were looking for an advisory opinion. Ms. Flynn said no, they had asked Ms. Gwinn for an opinion on whether they could have the machine set outside and were told yes, it was an accessory use, but that it had to comply with the restaurant's hours of operation.

A lengthy discussion ensued between Ms. Flynn, Mr. Hammack, Mr. Hart, Ms. Johnson-Quinn, Bill Shoup, and Mr. Pammel about whether some of the issues of this case should or should not be heard before the Board of Zoning Appeals.

There was discussion regarding whether Dolores Kinney, Staff Coordinator, Zoning Administration Division, had the authority to make determinations in this case. There was discussion as to different interpretations of the August 21 letter written by Ms. Kinney, the authoritative opinion the violation was enforcing, whether the violation being appealed was a violation due to the machine being accessible 24 hours a day or due to the machine being located outside of the restaurant.

Mr. Hammack asked at what time of day the September 18 inspection was done. Mr. Shoup replied that it was done in the late afternoon.

Mr. Hammack asked if the County was solely basing its NOV on the August 21 letter and the fact that the machine was located outside. Mr. Shoup said that was correct, that the letter stated that they could have the machine as long as it was inside and any other questions regarding substantial conformance should be directed to the Zoning Evaluation Division.

Mr. Shoup introduced Kevin Guinaw, Zoning Evaluation Division, who said that the case involved a set of hypothetical questions, a use determination, and a NOV that are being amplified into overall substantial conformance questions which had not been asked yet. He stated that no implications should be drawn from the August 21 letter as to what was approved.

Ms. Flynn stated that the only violation they had received had to do with the hours of operation, which she stated they had addressed, and since she believed they had conformed to the hours, she believed they were not in violation.

Mr. Hammack said he understood the violation to be broader than just the hours of operation issue and that

~ ~ ~ January 21, 2003, MCDONALD'S CORPORATION, A 2002-DR-034, continued from Page 196

all the language and references to being in substantial conformance could not be ignored. He said the County Board would have to determine whether it was in substantial conformance with their Special Exception.

Mr. Pammel said that the October 1 letter, which was the letter being appealed, specifically said the proposed DVD vending machine, if located outside the building, would not be in substantial conformance with Condition 4 of SEA 86-D-076-2 and that an amendment to the Special Exception would be required to permit it at the proposed location.

Ms. Flynn said the October 1 letter concluded that the hours of operation were being violated and that there was no evidence the hours of operation were violated.

Mr. Hart stated that if the applicant didn't appeal the August letter that said the Special Exception needed to be amended to allow the machine in the proposed location outside, that would stand.

Mr. Hart asked if staff had any response to the argument about who sent the letters and the Statute about the deputy and said he'd like to hear that at the appropriate time. Mr. Guinaw said they weren't provided with the cited Statute 2-209. A brief discussion ensued about the Zoning Administrator having duly authorized agents, Dillon's Rule, the General Assembly and the Zoning Ordinance.

Mr. Flynn made her conclusive statement.

Chairman DiGiulian called for speakers.

Jack Wilburn, President of McLean Revitalization Corporation and Past President of McLean Planning Committee, came forward to speak in opposition of the appeal.

Ms. Flynn stated in her rebuttal that she believed that as long as they were operating under the NOV, the BZA was the venue they were supposed to be in.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to uphold the decision of the Zoning Administrator. He said the August 21 letter was clear that an accessory use may be permitted under the Zoning Ordinance provided that such use was in substantial conformance with SEA 86-D-076-2. He said the letter went on to say that placement outside would be in violation. Mr. Hammack stated that the letter was never appealed. He said McDonald's needed to go back to the County Board to determine whether the machine was in substantial conformance and that the machine was not part of the SEA to begin with. He said substantial conformance dealt with a multitude of issues and limiting the appeal to one issue wasn't enough to convince him to not support the Zoning Administrator. Mr. Hammack said in regard to the issue of authority of others to act on behalf of the Zoning Administrator, that would be an issue for a court to deal with and he didn't know if the Board had the authority to make that kind of decision.

Mr. Pammel seconded the motion.

Mr. Hart stated he would support the motion and Mr. Hammack's rationale. He said that common sense would say that a machine that says 24 hours on it, plugged, unplugged or an error in judgment, that included within a use that limited its hours of operation, the 24-hour announcement would violate the condition on the hours.

The motion passed by a vote of 6-0. Mr. Ribble was not present for the vote.

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~ ~ ~ January 21, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ALI & KAMRAN GERAYLI, SP 2002-HM-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.6 ft. from side lot line and 8.7 ft. from rear lot line. Located at 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E.

~ ~ ~ January 21, 2003, ALI & KAMRAN GERAYLI, SP 2002-HM-050 and VC 2002-HM-147, continued from Page 197

Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with VC 2002-HM-147). (Admin moved from 11/26/02 for notices)

9:00 A.M. ALI & KAMRAN GERAYLI, VC 2002-HM-147 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 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with SP 2002-HM-050). (Admin moved from 11/26/02 for notices)

The applicant was not present at the public hearing. Susan Langdon suggested a deferral date of February 11, 2003, to allow time to contact the applicants. Chairman DiGiulian indicated that if the applicants were not present for their next scheduled public hearing, the BZA would take action to dismiss the applications. Mr. Pammel moved to defer the application to February 11, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. Mr. Kelley indicated that staff should inform the applicants that there would be no further deferrals.

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~ ~ ~ January 21, 2003, (Tape 2), After Agenda Item:

Consideration of Acceptance  
Application for Appeal filed by John W. Jackson

Mr. Shoup said that staff recommended that the appeal not be accepted. He stated that in the December 4, 2002, letter written by Delores Kinney, which was the letter the appellant was appealing, Ms. Kinney noted that the property met the current Zoning Ordinance requirements which respect to lot width and lot area. He said the letter also went on to advise that unless it could be demonstrated that the property was legally subdivided, no building permit would be issued, but further stated that if it could be determined to have been legally subdivided, a building permit may be issued. Mr. Shoup stated that it was staff's position that the only determination that Ms. Kinney made was with respect to lot width and lot area and provided advisory information about under what circumstances a building permit may be issued and that no determination had been made as to whether the lot was a buildable lot, which made the appeal premature.

Mr. Hart and Mr. Shoup discussed if the applicant disagreed with the information regarding the history of the property in the letter, whether he'd have to appeal the letter to avoid being stuck with it.

Bill Baskin appeared on behalf of the applicant. He stated that the determination of whether a lot is buildable or not was a determination that the Zoning Administrator was required to make under a provision of the Zoning Ordinance. He said, to his knowledge, there was no definition or requirements about how to subdivide to result in buildable lots in the Subdivision Ordinance. Mr. Baskin stated that the issue for determination was solely within the realm of the Zoning Administrator, so the appeal was appropriate.

Ms. Gibb asked who examined the title for the property. Mr. Shoup said Ms. Kinney did deed research. Ms. Gibb asked about Ms. Kinney's background. Mr. Shoup stated that Ms. Kinney was a planner and was not a title examiner. Ms. Gibb and Mr. Shoup discussed who should be doing title examinations for homeowners.

Mr. Pammel asked if an appeal was not accepted and a decision were made based on the Subdivision Code that it was not a buildable lot, was it correct that an individual had no right of appeal under the Subdivision Code. Mr. Shoup replied that was correct, it would have to go to Circuit Court.

Ms. Gibb made a motion to accept the appeal. The motion was seconded by Mr. Kelley.

Mr. Hart commented that it was not easy to read titles. He said he found it troubling that a planner's work was being looked at by an engineer and letters were being sent out with conclusions regarding lots that had houses on them for 50 years.

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

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~ ~ ~ January 21, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
Ajey Bargoti, SP 97-Y-014

Mr. Kelley moved to approve 12 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date was January 30, 2004.

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~ ~ ~ January 21, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
B.W. Management, SP 99-B-054

Mr. Kelley moved to approve 90 days of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date was March 1, 2003.

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~ ~ ~ January 21, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
William and Barbara Weiss, VC 00-H-022

Mr. Kelley moved to approve 12 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date was January 26, 2004.

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~ ~ ~ January 21, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
The Most Rev. S. Loverde, Bishop of the Catholic Diocese of Arlington, VA  
and His Successors in office  
SPA 80-C-096-4

Mr. Kelley moved to approve six months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date was June 6, 2003.

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~ ~ ~ January 21, 2003, (Tape 2), After Agenda Item:

Approval of January 14, 2003 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.

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As there was no other business to come before the Board, the meeting was adjourned at 1:00 p.m.

Minutes by: Regina Thorn Corbett

Approved on: September 28, 2004

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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, January 28, 2003. 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.

~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN J. & MARY T. DELEYIANNIS, VC 2002-MV-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.5 ft. from side lot line and 2.0 ft. from rear lot line. Located at 6109 Woodmont Rd. on approx. 8,125 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (6) 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. Steven Deleyiannis, 6109 Woodmont Road, Alexandria, Virginia, replied that it was.

Tracy Swagler, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of an accessory structure consisting of a freestanding one-car garage 2.5 feet from the side lot line and 2.0 feet from the rear lot line. The side setback in the R-4 district is 10.0 feet and the rear setback is 11.0 feet; therefore, variances of 7.5 feet and 9.0 feet, respectively, were requested.

Mr. Deleyiannis presented the variance request as outlined in the statement of justification submitted with the application. He explained that they were trying to put a one-car garage on an existing pad. He stated that the community consisted of single-family homes, and on each side of his property there were structures that were within two to three feet of the property line.

Mr. Pammel asked the applicant what the dimensions of the existing slab were. Mr. Deleyiannis stated that the structure was 22.0 feet by 18.0 feet.

Mr. Pammel asked the applicant if the current slab was located as the dimensions were shown on the plat. Mr. Deleyiannis stated that it was.

Mr. Hart asked the applicant if the measurements of the structure were to the wall of the garage. Mr. Deleyiannis stated that it was.

Mr. Hart asked the applicant if there was an overhang. Mr. Deleyiannis stated that there would be an overhang on the sides for drainage purposes.

Mr. Hart asked the applicant how much of an overhang there would be. Mr. Deleyiannis stated that it would be two to three inches for the gutters.

Mr. Hart asked the applicant if there would be any gutters on the back of the structure. Mr. Deleyiannis stated that there would not.

Mr. Hart asked if there was a reason that the garage needed to be as large as the slab. Mr. Deleyiannis stated that the garage needed to accommodate one car and storage.

Mr. Hart asked staff if there were any records of approvals for variances in the neighborhood this close to the lot line. Ms. Swagler stated that there were not.

Mr. Hart asked if it was possible that they were older variance. Ms. Swagler stated that was possible.

Chairman DiGiulian called for speakers.

Forrest Williams, 6130 Vernon Terrace, Alexandria, Virginia, came forward to speak in opposition of the requested variance. He explained that he lived directly behind the applicant for 25 years. With regard to the applicant's explanation that due to the location of the lot and the location of the dwelling, the placement of

~ ~ ~ January 28, 2003, STEVEN J. & MARY T. DELEYIANNIS, VC 2002-MV-187, continued from Page 201

the garage was limited, Mr. Williams stated that the garage could be placed further up the driveway, which would make it further from the lot line. He stated that there was an existing water runoff problem and he was concerned about where the water from the eaves was going to drain. He stated that he had a garage that was four feet from the lot line that had been there since he bought the property and that the applicant knew it was there before he bought the property and that putting up the structure would change the character of his lot as well as the neighbors.

Ms. Lofton, no address given, came forward to speak in opposition of the requested variance. She explained that she lived behind the Deleyiannis property. She stated that there was another garage where an addition now stood and the Deleyiannis' chose not to use that garage. She stated that the existing pad was placed in its current location recently. She stated that the pad was 1.5 feet from the property line. She explained that the garage could be put in without a variance if it was placed elsewhere. She expressed concern over a 200-year old tree in the neighbor's backyard. She stated that she was concerned about the canopy in her neighborhood. She said she had lost six bushes last year and was concerned about the water runoff. She stated that the garage would change the character of the neighborhood.

Mr. Hart asked Ms. Lofton if she could show on the overhead where the previous garage had been located. Ms. Lofton stated that it was part of the house and was not a freestanding structure.

Mr. Deleyiannis stated, in his rebuttal, that they had put gravel and French drains on the back and side of the slab to eliminate drainage problems. He stated that their yard was 2.0 feet higher than his neighbors and that there was a problem with the previous slab because there was no place for runoff to go. He stated that they had corrected the problem with the new slab. He stated that runoff had not been a problem in the past year because of the new slab. He stated that the drainage from the gutters was designed to go into the French drains so that there would be no runoff from the garage.

Mr. Pammel asked the applicant if he had thought about building an attached garage at the front of the house. Mr. Deleyiannis stated that there was no room because of the addition that had been put on. He explained that when the home was purchased there was a foot of water in the basement and it needed to be renovated. He stated that the water from the garage was draining into the house so they built an addition over the existing garage.

Mr. Pammel stated that if the garage was built at the front corner of the house, it would be a much greater distance from the lot line. Mr. Deleyiannis said that would change the character of the community. He explained that the community had garages set back and there were very few attached garages. He explained that placing the garage on that side of the house would knock out windows and would come too close to the neighbor's addition.

Mr. Pammel asked the applicant how many lots on his block had detached garages similar to the proposed garage. Mr. Deleyiannis stated that there were two or three homes with detached garages. He explained that it depended on the size of the lot, where the garages were placed. He stated that some of the houses had the original plan with an attached garage. Mr. Deleyiannis said they could not maintain that garage because of the drainage problems.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VC 2002-MV-187 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN J. & MARY T. DELEYIANNIS, VC 2002-MV-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.5 ft. from side lot line and 2.0 ft. from rear lot line. Located at 6109 Woodmont Rd. on approx. 8,125 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (6) 13. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ January 28, 2003, STEVEN J. & MARY T. DELEYIANNIS, VC 2002-MV-187, continued from Page 202

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 2003; 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 met the criteria for a variance.
3. There are only two other neighbors on the block with detached garages.
4. The detached garage would change the character of the neighborhood.
5. The garage is too close to the adjoining properties.
6. An attached garage was present when they acquired the property.

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

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

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

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

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 1-year waiting period for refiling an application. 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 February 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      STEPHEN R. & NINA S. BLANCHARD, SP 2002-SU-063 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 13203 Custom House Ct. on approx. 1,500 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 35-3 ((23)) 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. Stephen Blanchard, 13203 Custom House Court, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a special permit for modification to the limitation of the keeping of animals to allow three dogs on the subject property. The Zoning Ordinance requires a lot size of 12,500 square feet for three dogs, and the applicant's property was 1500 square feet.

Mr. Hammack asked staff if there was a complaint about the dogs. Ms. Stanfield replied that there was.

Stephen Blanchard presented the variance request as outlined in the statement of justification submitted with the application. He explained that when they moved into the house they only had two of the three dogs. He stated that a few years later circumstances brought the third dog which was fifteen years old and had health problems. He explained that they had tried to find him a home but were unsuccessful. He explained that the homeowner's association said they could have up to four dogs on the property. He stated that three years after they acquired the third dog, they received a letter stating they were in violation of the Zoning Ordinance. He stated that they were willing to comply with development conditions and would not get another dog after one of them died.

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

Mr. Hammack moved to approve SP 2002-SU-063 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

STEPHEN R. & NINA S. BLANCHARD, SP 2002-SU-063 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 13203 Custom House Ct. on approx. 1,500 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 35-3 ((23)) 37. 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 28, 2003; 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:

~ ~ ~ January 28, 2003, STEPHEN R. & NINA S. BLANCHARD, SP 2002-SU-063, continued from Page 204

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, 13203 Custom House Court (1,500 square feet), shown on the plat prepared by Sam Whitson, Land Surveyor, dated June 18, 1996, revised by Steve Blanchard, October 28, 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 third dog shall not be replaced.
4. The yard associated with the dwelling shall be cleaned of animal debris daily and such debris shall be disposed of in a method approved by the Health Department.

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote, and Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. CALVERT HOMES, INC., VC 2002-MA-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 12A having a lot width of 46.25 ft. and proposed Lot 12B having a lot width of 51.99 ft. Located at 6301 Buffalo Ridge Rd. on approx. 36,187 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((13)) 12.

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

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the subdivision of one lot into two lots with proposed Lot 12A having a lot width of 46.25 feet and Lot 12B having a lot width of 51.99 feet. The Zoning Ordinance requires a minimum lot width of 80.0 feet.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She explained that the lot sizes would be compatible with the area, but the limited frontage of the property required a variance. She stated that the property was a little less than one acre and the angled lot limited development. She said the property was adjacent to two commercially owned properties. She stated that the variance met 18-404 of the Zoning Ordinance. She said that the property had unique conditions which limited development. She explained that the property had an unusual shape, limited frontage, and a location at the end of a cul-de-sac which contributed to the need for a variance. She stated that not granting the variance would produce undue hardship and the applicant would not be able to divide the property in a fashion compatible with the neighborhood. She said that all other zoning regulations would be met. She explained that other lots in the neighborhood were more rectangular and uniform in shape. Ms. Strobel stated that there would be tree preservation and they agreed with the development conditions.

Mr. Pammel noted that there was a letter in opposition to the variance which stated that the applicant had not been a good neighbor. Ms. Strobel replied that she was aware of the letter and that when there was new construction, there were by-products which included dust and noise. She stated that the client was aware of the concern.

Mr. Hart asked staff if he could see a copy of the development conditions. Ms. Stanfield replied that she

~ ~ ~ January 28, 2003, CALVERT HOMES, INC., VC 2002-MA-183, continued from Page 205

would give him a copy of them.

Mr. Hart asked Ms. Strobel if the pie-shaped lots in the cul-de-sac were part of the commercial area along Leesburg Pike. She replied that they were and they accessed Leesburg Pike.

Mr. Hart asked if this was the dividing line between commercial and residential properties. She stated that it was not to her knowledge and explained that the commercial lots were originally part of the Buffalo Hills subdivision. She stated that the neighborhood had concerns about commercial encroachment and she thought the building of two new houses would be appreciated in the neighborhood.

Chairman DiGiulian called for speakers.

George Fitchco, 3027 Hazelton Street, came forward to speak in opposition to the requested variance. He explained that he was the president of the Buffalo Hills Civic Association and that they had not heard about the variance request until they were notified of the hearing. Mr. Fitchco stated that they did not have much time to review the proposed variance. He stated that the community liked the current home and did not want it to be torn down. He explained that the covenants of the civic association did not object to the plan. Mr. Fitchco stated that the covenants explained that they should have been given blueprints of the proposed construction to review before the hearing. He explained that the property was one of the highest points in Fairfax County and was on a steep slope down to the street. Mr. Fitchco stated that he was concerned about a drainage problem where water was draining into his property. He requested having something entered into the development conditions that addressed drainage.

Ms. Strobel stated, in her rebuttal, that she and Mr. Fitchco reviewed the covenants and they did not have any issues associated with those. She explained that the applicant would be willing to work with Mr. Fitchco on the drainage issues.

Mr. Hart asked Ms. Strobel why she was going to put Calvert Homes in touch with Mr. Fitchco. She explained that it was to ensure any drainage issues Mr. Fitchco had would be addressed. She explained that during the subdivision process they would have to address issues of storm water management with Fairfax County.

Mr. Hart asked Ms. Strobel if her client had any problems with sharing the plans with the Association. Ms. Strobel stated that it would not be a problem.

Mr. Hammack noted that the plat that was submitted showed the house on lot 12A to be violating the setback lines, with a note saying that they reserved the right to change the location. Ms. Strobel stated that it appeared to be an error on the plat. She stated that she would agree to a condition stating that the plan would be revised to make that modification to a 25-foot setback.

Mr. Hammack noted that given the topography of the site, the building on lot 12B was 396 feet and dropped off very steeply. He asked if there could be a condition that required them to cooperate with Mr. Fitchco on the drainage requirements. Ms. Strobel stated that they would work with them on the issue with a development condition.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2002-MA-183 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CALVERT HOMES, INC., VC 2002-MA-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 12A having a lot width of 46.25 ft. and proposed Lot 12B having a lot width of 51.99 ft. Located at 6301 Buffalo Ridge Rd. on approx. 36,187 sq. ft. of land zoned

~ ~ ~ January 28, 2003, CALVERT HOMES, INC., VC 2002-MA-183, continued from Page 206

R-3 and HC. Mason District. Tax Map 51-3 ((13)) 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 January 28, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a variance.
3. The lot is large with a small amount of street frontage.
4. The lot shape is consistent with other lots at the end of cul-de-sacs.
5. There would not be a significant impact on neighbors.
6. With the areas of tree save there is a greater restriction on development with two lots instead of one.
7. The location adjacent to commercial property precludes consolidation.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 minimum lot width of 46.25 feet for Lot 12A and a minimum lot width

~ ~ ~ January 28, 2003, CALVERT HOMES, INC., VC 2002-MA-183, continued from Page 207

of 51.99 feet for Lot 12B, as shown on the plat prepared by David Jensen, dated December 9, 2002 and sealed on December 10, 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 approval of overlot grading plans for the proposed lots, a tree preservation plan showing final limits of clearing and grading shall be approved by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES). The tree preservation plan shall depict preservation of as much of the existing tree canopy as possible as determined by the Urban Forester.
3. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements on each lot shall be submitted to the Department of Public Works and Environmental Services (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. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forestry Division, a pre-construction conference shall be held on site between DPWES and representatives of the applicant to include the construction site superintendent responsible for 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. All utilities located outside the limits of clearing and grading shall be located and install in a manner which is the least disruptive to the natural vegetation as possible.
4. Notwithstanding that which is shown on the plat, house locations shall comply with all minimum yard requirements, absent a variance.

Pursuant 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 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      ROBERT E. GRIESEMER, JR., VC 2002-SP-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height and accessory structures in front yard on a lot containing 36,000 sq. ft. or less. Located at 4103 Plaza La. on approx. 13,229 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-1 ((3)) (63) 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. Robert E. Griesemer, Jr., 4103 Plaza Lane, Fairfax, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the request as contained in the staff report. The applicant requested a variance to permit construction of a fence 6.0 feet in height and to build two accessory structures in the front yard of a lot containing less than 36,000 square feet. The Zoning Ordinance permits a fence of 4.0 feet in height; therefore, a variance of 2.0 feet was requested for the fence.

Mr. Ribble asked staff if they needed approval for a variance on the deck. Staff replied that they would.



~ ~ ~ January 28, 2003, ROBERT E. GRIESEMER, JR., VC 2002-SP-184, continued from Page 208

Robert E. Griesemer, Jr. presented the variance request as outlined in the statement of justification submitted with the application. He stated that they would like to install an above-ground pool to improve the quality of life for their children since the waiting list for a pool membership in their neighborhood was very long. He stated that the location that they picked for the pool was the best use of yard space and for adequate safety and pool drainage. He stated that they were not aware that the fenced area in their yard would not be available to use. He stated that the pool was six feet away from their neighbor's property line and was not aware that this was not far enough away from their neighbor's property line. He stated that the location and size of the house on the lot restricted the use of the back yard and that if the pool was entirely in the back yard, it would restrict use of their back yard. He explained that the new six-foot fence would replace the unsightly chain link fence that was currently in that location. He stated that other corner lots in the area had high fences in their side and front yards.

Mr. Hart asked the applicant what the new fence would be made of. Mr. Griesemer stated that it would be a wooden privacy fence.

Mr. Hart asked the applicant if he would object to a development condition requiring that the fence be made of wood. Mr. Griesemer stated that he would not.

Mr. Hart asked staff if the supports for the pool, if not depicted, would still be approved. Staff stated that they were part of the pool structure and were not reducing the side yards.

Mr. Ribble asked the applicant who the contractor was that built the pool. Mr. Griesemer stated that he built the pool.

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

Mr. Ribble moved to deny VC 2002-SP-184 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT E. GRIESEMER, JR., VC 2002-SP-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height and accessory structures in front yard on a lot containing 36,000 sq. ft. or less. Located at 4103 Plaza La. on approx. 13,229 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-1 ((3)) (63) 1. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 2003; and

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

1. The applicant is the owner of the land.
2. There was a similar case where a homeowner put a fence in the front yard and he had to come into compliance with the Zoning Ordinance.

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;

~ ~ ~ January 28, 2003, ROBERT E. GRIESEMER, JR., VC 2002-SP-184, continued from Page 209

- C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 4-2. Ms. Gibb and Mr. Hammack voted against the motion. Mr. Pammel moved to waive the 1-year waiting period for refileing an application. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN R. OBERST, VC 2002-SP-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.4 ft. from side lot line. Located at 11334 Edenderry Dr. on approx. 20,395 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((3)) 36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Oberst, 11334 Edenderry Drive, Fairfax, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition 14.4 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a variance of 5.6 feet was requested.

Ms. Gibb asked staff if the patio was allowed to be in the setback. Staff explained that the patio had a permitted extension of up to 12 feet.

~ ~ ~ January 28, 2003, JOHN R. OBERST, VC 2002-SP-180, continued from Page 210

Mr. Oberst presented the variance request as outlined in the statement of justification submitted with the application. He explained that the house was built in 1987 and had depreciated. He stated that the house was built with a galley style kitchen and that type of kitchen was no longer appropriate for the value of the home. He explained that two of his neighbors whose properties abut his had added kitchen additions. He stated that he had statements from neighbors who were in support of his addition. He stated that he intended to cover a deck with the new structure that would be off the ground. Mr. Oberst explained that he hired an architect to design the structure so it was in character with the rest of the neighborhood and would conform to all County regulations.

Mr. Hammack noted that the plat showed that the addition would be larger than the deck. Mr. Oberst stated that it would be two feet larger than the deck.

Mr. Oberst stated that he had four neighbors whose properties adjoined his and only two of the neighbors would be able to see the addition. He stated that there were many trees and that one of the neighbors was on five acres of property.

Mr. Hammack asked the applicant if the neighbor he discussed the addition with was the adjacent property owner, Mr. Zussman. Mr. Oberst stated that they were in favor of the addition.

Mr. Hart noted that the lot was zoned RC, but the lot was much smaller than an RC lot. He asked if it was developed under another set of numbers. Susan Langdon, Chief, Special Permit and Variance Branch, stated that it was developed before the down-zoning to the RC District.

Mr. Hart asked if the minimum yard requirements would have been less than what they were for a five-acre lot. Ms. Langdon stated that they most likely would and explained that it was previously zoned R-3 so the side yard requirement would have been 12.0 feet.

Mr. Oberst stated that the area was developed by RJL in August of 1987 and the Zoning Ordinance went into effect the end of August.

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

Ms. Gibb moved to approve VC 2002-SP-180 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN R. OBERST, VC 2002-SP-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.4 ft. from side lot line. Located at 11334 Edenderry Dr. on approx. 20,395 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((3)) 36. 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 28, 2003; 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 surrounding neighbors is minimal.
3. The addition will only be 14.4 feet from the lot line in one place.
4. Had the property not been rezoned, the side yard would have only been 12.0 feet.
5. The applicant has met all the required standards for a variance.

~ ~ ~ January 28, 2003, JOHN R. OBERST, VC 2002-SP-180, continued from Page 211

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Charles R. Johnson, dated September 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 6-0. Mr. Kelley was absent from the meeting

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ELWOOD L. & ERNA S. JONES, VC 2002-LE-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with SP 2002-LE-062).

9:00 A.M. ELWOOD L. & ERNA S. JONES, SP 2002-LE-062 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.4 ft. from side lot line and 4.2 ft. from rear lot line and dwelling 21.4 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with VC 2002-LE-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. Fernando Rendon, 5803 Quiet Brook Road Fairfax, Virginia, replied that it was.

Lindsey Shulenberger, Rezoning and Special Exception Branch, presented the request as contained in the staff report. The applicant requested a variance to permit construction of an addition 18.5 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 6.5 feet was requested. The applicant also requested a reduction to the minimum yard requirements based on error in building location to permit an accessory structure to remain 3.4 feet from the side lot line and 4.2 feet from the rear lot line. The minimum required side yard in the R-3 zoning district is 12 feet. The minimum required rear yard for the accessory structure is equal to the height of the structure, which was 9.1 feet; therefore, modifications of 8.6 feet and 4.9 feet were requested. The applicant requested a reduction to the minimum yard requirements based on error in building location to permit the dwelling to remain 21.4 feet from the rear lot line. The minimum required rear yard in the R-3 zoning district is 25 feet; therefore, a modification of 3.6 feet was requested for the dwelling.

Fernando Rendon presented the requests as outlined in the statement of justification submitted with the applications. He explained that they were planning to build an addition where the existing sundeck was currently located and found out that a variance would be required. He stated that in addition the property was surveyed because of the accessory structure and dwelling extension.

Mr. Hammack asked if the sunroom addition would be the same size as the existing deck. Mr. Rendon stated that the sundeck currently extended 10 feet and the addition would extend 12 feet.

Mr. Hammack asked if the deck would be enlarged. Mr. Rendon stated that there would be a deck joined to the sunroom.

Mr. Hammack asked if Mr. Rendon if knew anything about the shed. Mr. Rendon stated that he was told it was done eight years prior and was built by the homeowner. He explained that the applicant was a mechanic and used the shed primarily for storage.

Mr. Hammack noted that there was a concrete pad under the shed. Mr. Rendon stated that was correct.

Mr. Hart noted that there was a letter from Carol Farley asking about tree removal. He asked if there would be any trees removed to do the project. Mr. Rendon stated that there would not.

Mr. Hart asked if the garage was attached to the slab or just placed upon it. Mr. Rendon stated that he was not sure.

Mr. Hart asked if the garage could be shifted further from the lot line. Mr. Rendon stated that it would be up to the homeowner whether or not that would be acceptable to him. He explained that the garage would have to be taken down and the existing slab would need to be extended.

Mr. Hart asked if Mr. Rendon knew if there were any utilities running to the shed. Mr. Rendon stated that there were not.

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

~ ~ ~ January 28, 2003, ELWOOD L. & ERNA S. JONES, VC 2002-LE-181 and SP 2002-LE-062, continued from Page 213

Mr. Hammack moved to defer decision on VC 2002-LE-181 and SP 2002-LE-062 to February 4, 2003, at 9:00 a.m. He requested the applicants appear at the hearing to give testimony regarding the circumstances surrounding how the shed came to be in its current location. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KARL J. FRYXELL, SP 2002-BR-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line and dwelling 10.1 ft. from side lot line. Located at 4405 Alta Vista Dr. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 148.

Chairman DiGiulian noted that SP 2002-BR-064 was administratively moved to February 25, 2003.

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~ ~ ~ January 28, 2003, (Tape 1), Scheduled case of:

9:30 A.M. MARVIN D. AND JEAN P. TOOMBS, A 2002-MA-022 and A 2002-MA-023 Appls. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing tenants to operate a Vehicle Major Service Establishment and a Truck Rental Establishment in the C-8 District without special exception approval and without valid Non-Residential Use Permits in violation of Zoning Ordinance provisions. Located at 5710 Center La. on approx. 23,352 sq. ft. of land zoned C-8, CRD, HC and SC. Mason District. Tax Map 61-2 ((20)) 16. (Concurrent with A 2002-MA-024). (Admin moved from 10/22/02 per appl. req) (Def from 11/5/02 and 1/14/03)

9:30 A.M. MARVIN D. AND JEAN P. TOOMBS, A 2002-MA-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a tenant to operate a Vehicle Major Service Establishment in the C-8 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 5710 Center La. on approx. 19,039 sq. ft. of land zoned C-8, CRD, HC and SC. Mason District. Tax Map 61-2 ((20)) 17A. (Concurrent with A 2002-MA-022 and A 2002-MA-023). (Admin moved from 10/22/02 per appl. req) (Def from 11/5/02 and 1/14/03)

Chairman DiGiulian noted that appeals A 2002-MA-022, A 2002-MA-023, and A 2002-MA-024 were withdrawn.

Mr. Pammel moved to accept the withdrawal of A 2002-MA-022, A 2002-MA-023, and A 2002-MA-024. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the hearing.

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~ ~ ~ January 28, 2003, (Tape 1), After Agenda Item:

#### Approval of January 21, 2003 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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Mr. Pammel moved to support the reappointment of Nancy Gibb to the Board of Zoning Appeals. Mr. Hammack and Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from

~ ~ ~ January 28, 2003, AFTER AGENDA ITEMS, continued from Page 214

the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:31 a.m.

Minutes by: Alison Capo

Approved on: October 5, 2004

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
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, February 4, 2003. The following Board Members were present: John DiGiulian, John Ribble, Nancy Gibb, James Hart, Paul Hammack and James Pammel. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 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.

~ ~ ~ February 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ELWOOD L. & ERNA S. JONES, SP 2002-LE-062 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.4 ft. from side lot line and 4.2 ft. from rear lot line and dwelling 21.4 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with VC 2002-LE-181). (continued from 1/28/03)

9:00 A.M. ELWOOD L. & ERNA S. JONES, VC 2002-LE-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with SP 2002-LE-062). (continued from 1/28/03)

Chairman DiGiulian called the applicants to podium.

Mr. Pammel noted that Mr. Hammack was not present for the hearing and, therefore, asked for the cases to be moved to the end of the agenda.

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

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~ ~ ~ February 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LEE G. FLORIST, SP 2002-HM-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 deck to remain 0.9 ft. from rear lot line. Located at 13005 Azalea Woods Way on approx. 11,068 sq. ft. of land zoned PDH-3. Hunter Mill District. Tax Map 25-1 ((25)) (2) 32.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lee Florist, 13055 Azalea Wood Way, Herndon, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested a reduction to the minimum yard requirements based on error in building location to permit a deck to remain 0.9 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 5.0 feet; therefore, a modification of 4.1 feet was required.

Mr. Hart verified that there was a building permit application, which was reviewed and denied because the property required a variance. He stated that the building permit application was later amended to have a setback of 5.0 feet; however, what was built was more than what was applied for the first time and what was approved the second time. Ms. Shulenberger stated that information was correct.

Mr. Florist presented the special permit request as outlined in the statement of justification submitted with the application. He stated that his builder advised him to build his own deck to save money. He stated that he hired a man to build his deck, who filled out the County applications and asked him to sign the application for the permit. Mr. Florist asked his contractor at that time to increase his deck from 8.0 to 12.0 feet; however, he stated that neither he nor his contractor had any knowledge of County setback requirements nor did they know to apply for another permit when the request changed. Mr. Florist reviewed the required standards for the granting of a special permit and noted that he was in compliance with the Zoning Ordinance.

~ ~ ~ February 4, 2003, LEE G. FLORIST, SP 2002-HM-061, continued from Page 217

The Board discussed, at length, the history of the building permit and the issue that the building permit applications did not identify the name or license number of the contractor. Mr. Florist reviewed his history with the contractor; however, he did not disclose his name or address for the record and stated that he did not know if he was licensed or not.

Mr. Hammack questioned the issue of the notary public who notarized his signature. Mr. Florist stated that the application was signed before the notary public with the second application and not the first. This issue was discussed at length.

Chairman DiGiulian called for speakers

Zhou Yong, Lot 37, 12945 Cedar Lane, Herndon, Virginia, came to the podium to speak in opposition of the application. He stated that Mr. Florist was required to receive approval from the HOA/ARB prior to construction. He also stated that approval from all adjacent neighbors should have been received, and noted that he was directly adjacent to Mr. Florist and was not notified prior to construction. He stated that he was the one who contacted the County to verify that a building permit was received and was told that no building permit was approved for a deck on that property. Upon questioning from the Board, he noted that the first time he contacted the County was the first or second day of construction.

Mr. Florist came to the podium to rebut the opposition stating that he had submitted approval to the HOA and he had gone to three different homeowners requesting their approval of the deck prior to its construction. He further stated that he relied on his contractor to apply for the correct permits because he had no knowledge of the County's laws.

Mr. Hammack asked Mr. Florist if it was his testimony that he had never come to the County staff to make application. Mr. Florist stated that the first application he did not sign, although the second application he did, with a notary public.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that he suspected that the contractor who built the deck had a lot to do with why the Board was involved in the application and, therefore, requested staff to work with Mr. Florist to obtain the name, address, and phone number of the contractor and also requested staff to contact the contractor to request that he appear before the Board to explain his actions with respect to the application. He further stated that in the event the contractor was unwilling to do this, that the Board take action to subpoena the contractor.

Mr. Pammel moved to deny SP 2002-HM-061 for the reasons stated in the Resolution.

Mr. Hammack asked staff to locate the notary who notarized the building permit so that maybe she could tell the Board who the contractor was or if Mr. Florist actually signed the application.

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## COUNTY OF FAIRFAX, VIRGINIA

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

LEE G. FLORIST, SP 2002-HM-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 deck to remain 0.9 ft. from rear lot line. Located at 13005 Azalea Woods Way on approx. 11,068 sq. ft. of land zoned PDH-3. Hunter Mill District. Tax Map 25-1 ((25)) (2) 32. 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 4, 2003; and

~ ~ ~ February 4, 2003, LEE G. FLORIST, SP 2002-HM-061, continued from Page 218

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

1. The applicant is the owner of the land.
2. The mistake was not done in good faith.
3. The reduction does impair and will be detrimental to the use and enjoyment of adjacent properties.
4. This is a self-imposed hardship.

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. 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 February 12, 2003.

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~ ~ ~ February 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ELWOOD L. & ERNA S. JONES, SP 2002-LE-062 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.4 ft. from side lot line and 4.2 ft. from rear lot line and dwelling 21.4 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with VC 2002-LE-181). (continued from 1/28/03)

9:00 A.M. ELWOOD L. & ERNA S. JONES, VC 2002-LE-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with SP 2002-LE-062). (continued from 1/28/03)

Chairman DiGiulian called the applicants to the podium.

Fernando Rendon, Finko Construction, stated that at the Board's request, Mr. Jones was present to answer questions regarding the existing storage shed on the property.

Mr. Hammack asked who constructed the shed in its present location and also asked if a building permit was obtained and if it were possible to move the shed.

Elwood Jones, 5907 Montell Drive, Alexandria, Virginia, stated that it was built in Maryland and was delivered to his property and noted that a building permit was not obtained. He stated that it could be moved; however, it would be a lot of trouble to do so. He also stated that he poured the concrete pad himself and that the shed was sitting directly on the slab.

Mr. Hammack asked what was on the property to the rear of the shed. Mr. Jones stated that it was a field with another house. Ms. Langdon stated that the house was 38 feet from Mr. Jones' property line.

Mr. Jones stated that the shed had been there for 8 or 9 years with no complaints from the County or the adjacent homeowners.

Mr. Pammel presented a photograph to Mr. Jones asking what an object was that was visible in the photo. Mr. Jones replied it was electrical and that his contractor had no knowledge of it.

Mr. Hart questioned the light connected to the outside of the shed. Mr. Jones replied that it was a utility shed

~ ~ ~ February 4, 2003, ELWOOD L. & ERNA S. JONES, SP 2002-LE-062 and VC 2002-LE-181, continued from Page 219

with an outside light; however, there was no plumbing in the shed.

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

Mr. Hammack moved to approve VC 2002-LE-181 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELWOOD L. & ERNA S. JONES, VC 2002-LE-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with SP 2002-LE-062). (Cont. from 1/28/03). 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 4, 2003; 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 house is cited to the center and rear of the property reducing the rear yard to some extent.
4. The actual variance is fairly minimal and will not impact detrimentally on the neighborhood or be out of 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.

~ ~ ~ February 4, 2003, ELWOOD L. & ERNA S. JONES, SP 2002-LE-062 and VC 2002-LE-181, continued from Page 220

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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, dated September 17, 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. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 2003. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack moved to approve SP 2002-LE-062 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ELWOOD L. & ERNA S. JONES, SP 2002-LE-062 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.4 ft. from side lot line and 4.2 ft. from rear lot line and dwelling 21.4 ft. from rear lot line. Located at 5907 Montell Dr. on approx. 14,979 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 18. (Concurrent with VC 2002-LE-181). (Cont. from 1/28/03). 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 4, 2003; and

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

~ ~ ~ February 4, 2003, ELWOOD L. & ERNA S. JONES, SP 2002-LE-062 and VC 2002-LE-181, continued from Page 221

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 structure and dwelling shown on the plat prepared by Alexandria Surveys International, dated September 17, 2002, submitted with this application and is not transferable to other land.
2. Within thirty days any applicable building and/or electrical permits shall be obtained and approval of final inspections shall be obtained for the structure to remain at that location.

This approval, contingent upon the above-mentioned 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 February 12, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. DENISE A. DAVENPORT, VC 2002-PR-189 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.6 ft. from front lot line. Located at 6902 Jefferson Ave. on approx. 8,104 sq. ft. of land zoned R-4. Providence District. Tax Map 50-

~ ~ ~ February 4, 2003, DENISE A. DAVENPORT, VC 2002-PR-189, continued from Page 222

4 ((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. Denise Davenport, 6902 Jefferson Avenue, Falls Church, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of an open porch to the front of the dwelling 23.6 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 30.0 feet; therefore, a variance of 6.4 feet was requested.

Ms. Davenport presented the variance request as outlined in the statement of justification submitted with the application. Ms. Davenport stated that the porch would provide a covered safe entryway into the house and also would help with water runoff issues and, therefore, asked for the Board's approval of the application.

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

Mr. Hart moved to approve VC 2002-PR-189 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DENISE A. DAVENPORT, VC 2002-PR-189 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.6 ft. from front lot line. Located at 6902 Jefferson Ave. on approx. 8,104 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 45. 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 4, 2003; 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 fairly small and the house is positioned close to the street in a neighborhood in which, based on photographs and the statement of justification, there are other homes that have a covered porch.
5. The magnitude of the variance request is fairly minimal and is not going to create a significant detriment for anyone.
6. Variances of this degree have been approved in the past.
7. The use would be an improvement to the neighborhood.
8. The house is now 60 years old and it is expected that these homes be upgraded.
9. Currently water is seeping into the basement at the front of the home and the porch will correct the drainage issue.

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

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

~ ~ ~ February 4, 2003, DENISE A. DAVENPORT, VC 2002-PR-189, continued from Page 223

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 November 11, 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 6-0. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TONY L. & DEBORAH A. CULLY, VC 2002-LE-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. chimney 7.6 ft. and roofed deck



~ ~ ~ February 4, 2003, TONY L. & DEBORAH A. CULLY, VC 2002-LE-182, continued from Page 224

6.2 ft. from side lot line. Located at 6432 Rives Ct. on approx. 14,477 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13)) (P) 530.

Chairman DiGiulian noted that the application was administratively moved to February 18, 2003.

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~ ~ ~ February 4, 2003 (Tape 1) Scheduled case of:

9:00 A.M. NETTIE D. HARRIS, VC 2002-PR-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 14.85 ft., bay windows 12.85 ft. and 16.0 ft. and stoop 13.0 ft. from edge of pipestem driveway and dwelling 7.0 ft. from side lot line. Located at 2919 Random Rd. on approx. 11,859 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((10)) 8A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nettie Harris, 2905 Random Road, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested construction of a dwelling 14.85 feet from the edge of a pipestem driveway and 7.0 feet from the side lot line, bay windows 12.85 feet and 16.0 feet, and a stoop 13.0 feet from the edge of a pipestem driveway. The Zoning Ordinance permits the dwelling to be constructed 25.0 feet from the edge of a pipestem driveway and 10.0 feet from the side lot line; therefore, variances of 10.15 feet and 3.0 feet were requested. The Zoning Ordinance permits the construction of bay windows 22.0 feet from the edge of a pipestem driveway; therefore, variances of 9.15 feet and 6.0 feet were requested. The Zoning Ordinance permits the construction of a stoop 20.0 feet from the edge of a pipestem driveway; therefore, a variance of 7.0 feet was requested.

Ms. Harris presented the variance request as outlined in the statement of justification submitted with the application. Ms. Harris stated that her current residence was a rented property and the owner wanted the home back which would leave her without a home. She stated that the land had been in her family for a long time and she was now ready to build a home on the property. She stated that the lot was extremely narrow.

Mr. Hart stated that he was concerned regarding a note on the plat referring to existing fences and a garage to be removed by the owner and questioned their encroachment onto Ms. Harris' property. Ms. Langdon stated that some of the fences were 6.0 feet in height in a front yard and could not remain without a variance and, therefore, staff did not put in a condition because it was already stated on the plat.

Ms. Harris stated that her neighbor knew that if his garage prevented her from being able to build a home that he would remove the garage and the fence.

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

Mr. Ribble moved to approve VC 2002-PR-185 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NETTIE D. HARRIS, VC 2002-PR-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 14.85 ft., bay windows 12.85 ft. and 16.0 ft. and stoop 13.0 ft. from edge of pipestem driveway and dwelling 7.0 ft. from side lot line. Located at 2919 Random Rd. on approx. 11,859 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((10)) 8A. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

~ ~ ~ February 4, 2003, NETTIE D. HARRIS, VC 2002-PR-185, continued from Page 225

applicable State and County Codes and with the by-laws of 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 4, 2003; 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 variance is necessary due to the narrowness 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 dwelling, bay windows and stoop, shown on the plat prepared by R.C. Fields and Associates, dated August 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,

~ ~ ~ February 4, 2003, NETTIE D. HARRIS, VC 2002-PR-185, continued from Page 226

thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 February 12, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ADO MACHIDA, VC 2002-SU-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 16.0 ft. from rear lot line. Located at 13601 Brockmeyer Ct. on approx. 8,389 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 422. (Admin moved from 12/3/02 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. Ado Machida, 13601 Brockmeyer Court, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested construction of a covered porch and deck 16.0 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 9.0 feet was requested for both the covered porch and the deck.

Mr. Machida presented the variance request as outlined in the statement of justification submitted with the application. Mr. Machida stated that the existing deck was built with the construction of the home in 1989 and was an uncovered deck. He stated that it faced east and received direct sunlight during the morning hours and, therefore, due to the heat, the deck could not be used by his four small children. Mr. Machida stated that the covered deck and porch would be smaller than the existing deck. He stated that behind the deck were trees and community open space. He said that neither the adjacent property owners or the homeowners association had opposition to the construction and, therefore, asked for the Board's approval of the application.

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

Ms. Gibb moved to approve VC 2002-SU-145 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ADO MACHIDA, VC 2002-SU-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 16.0 ft. from rear lot line. Located at 13601 Brockmeyer Ct. on approx. 8,389 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 422. (Admin moved from 12/3/02 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 February 4, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant provided a thorough statement of facts and testimony indicates that the required standards have been met.
3. The property has an unusual pie shape.
4. The new additions will be the same size, if not smaller, than the existing deck.
5. The addition is well screened and adjoins homeowner's association property that is an open area.

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

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

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

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

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

1. This variance is approved for the location of a covered porch and a covered deck, shown on the plat prepared by Richard H. Bartlett, dated June 11, 2002, as revised through 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 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

~ ~ ~ February 4, 2003, ADO MACHIDA, VC 2002-SU-145, continued from Page 228

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 4, 2003, (Tapes 1 and 2), Scheduled case of:

9:00 A.M.       BAHRAM SHAHRIARI, VC 2002-PR-159 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 2000 Woodford Rd. on approx. 24,416 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((1)) 43. (Admin moved from 12/17/02).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bahram Shahriari, 2000 Woodford Road, Vienna, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. She stated that the applicant requested an existing 6.0 foot high fence to remain in front yard. The Zoning Ordinance requires a maximum fence height of 4.0 feet; therefore, a variance of 2.0 feet was requested.

Mr. Shahriari presented the variance request as outlined in the statement of justification submitted with the application. Mr. Shahriari stated that the fence was required to safeguard his three children from the street so they could play in the backyard. He stated that the fence had existed for 3 or 4 years and they never thought the area would be considered as a front yard. Mr. Shahriari presented photographs to the Board showing his home and his fence, the condition of Rainbow Road, the dirt road that ran parallel to his property, and another home on Rainbow Road with the same fence. Mr. Shahriari stated that the property owner of the fence across Rainbow Road also filed a variance request which was approved. Mr. Shahriari stated that the dirt road was not policed, serviced by the County or received post office delivery and requested the Board's approval to permit the fence to remain for the safety of his children.

Ms. Gibb asked if the variance request was due to a Notice of Violation on the fence.

Bruce Miller, Senior Zoning Inspector, stated that staff had received complaints on both fences. He stated that the situations were similar in that the front yards faced Rainbow Road and the fences exceeded 4.0 feet in height.

Mr. Pammel questioned whether the lots met the requirements of the Subdivision Code.

Mr. Shoup stated that there were appeals filed on three lots further down Rainbow Road regarding buildable lot questions. He stated that he was not aware of this lot being looked at. Mr. Shoup and Mr. Pammel discussed the buildable lot issue.

Chairman DiGiulian called for speakers in support.

Ken Britts, owner of property directly opposite the applicant's property across Rainbow Road, came forward to speak in support of the application. Mr. Britts stated that his variance was approved approximately one year prior and the applicant was seeking a variance from the same provision of the Ordinance for the same reasons. He stated that the road was less than 16 feet wide and was considered an access road. Mr. Britts stated that the Board should approve the application as they had his application for the same reasons.

Vince Joyelle, 8413 Rainbow Road, stated that he lived at the end of the dirt road and stated that he had no

~ ~ ~ February 4, 2003, BAHRAM SHAHRIARI, VC 2002-PR-159, continued from Page 229

issues with the fence and asked for the Board's approval.

Chairman DiGiulian called for speakers in opposition.

Robert Hess, 8415 Rainbow Road, stated that the fence was an example of the reason why the regulation existed. He stated that the fences were stockade on both sides of Rainbow Road. He stated that the fence was built after he purchased his home in September 1999 and that he had three occasions where the fence had created a problem, to include people backing out of the driveway and children playing in the driveway. Mr. Hess also presented several photographs to the Board, taken that morning, showing the visibility issues on Rainbow Road. He stated that the other fence did not have a driveway on Rainbow Road and, therefore, was not the same type of situation as the current application. He stated that the applicant brought one corner of the fence in at the end of the driveway; however, he then planted a cypress tree, which further blocked any sight distance. Mr. Hess stated that both fences were built directly on the lot lines and, therefore, caused a sight hazard to anyone coming down Rainbow Road, because both fences exceeded 4.0 feet in height. Mr. Hess requested that the fence be tapered down to 4.0 feet in height or removed and, therefore, asked for the Board's denial of the application.

Mr. Shahriari stated that both the fence and tree existed and were erected in April 1999, prior to Mr. Hess purchasing the property; therefore, he was aware of the conditions of the property. Mr. Shahriari stated that no one should exceed 10 miles per hour on the dirt road and the safety issue was on the driver not the condition of the fence. Mr. Shahriari stated that even if the fence was 4.0 feet in height, excessive driving limits would still create a hazardous condition on Rainbow Road. He stated that he offered to install a three-way driving mirror to enhance visibility. Mr. Shahriari presented additional photographs of his driveway, home, and fence to show that there was not a visibility issue. He stated that his children were never unsupervised or played in the road.

Chairman DiGiulian closed the public hearing.

Mr. Hart asked if the corner of the fence could be pulled in to make the angle wider to improve visibility when coming out of the driveway. Mr. Shahriari stated that he could move the gate in another 6 or 7 feet to improve visibility; however, anyone driving at a high rate of speed would still create a problem even after moving the fence in on the property line.

Mr. Hammack moved to defer decision to March 4, 2003, at 9:00 a.m., to give the applicant an opportunity to provide sight distance information to either better the current sight distance or to move the fence back or taper down to 4.0 feet. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. Mr. Pammel also stated that a review of relocating the existing cypress tree should be made.

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~ ~ ~ February 4, 2003, (Tape 2), Scheduled case of:

9:00 A.M. LINDA K. SCHLAITZER AND JANICE M. TYREE, TRUSTEES FOR THE BERNADINE R. MELVIN TRUST, VC 2002-MA-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 3 lots with proposed Lots 2 and 3 having lot widths of 0.0 ft. Located at 4921 Sunset La. on approx. 2.88 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 2. (Admin moved from 11/5/02 and 12/10/02 per appl. Req.)

Chairman DiGiulian noted that the application was administratively moved to April 8, 2003.

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~ ~ ~ February 4, 2003, (Tape 2), 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,

~ ~ ~ February 4, 2003, T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 230.

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 8/4/02 and 9/10/02)

Chairman DiGiulian noted that the appellants requested a deferral.

William Shoup, Zoning Administration Division, stated that staff was seeking legal action against the next door property owner who had taken responsibility for the problems on the appellants' property and, therefore, requested a deferral to May 6, 2003, at 9:30 a.m.

Mr. Ribble moved to defer A 2001-LE-023 to May 6, 2003, 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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~ ~ ~ February 4, 2003, (Tape 2), Scheduled case of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2. (Admin moved from 12/10/02).

Chairman DiGiulian noted that the Board had issued an intent to defer to April 15, 2003, at 9:30 a.m.

Mr. Hart moved to defer A 2002-LE-031 to April 15, 2003, at 9:30 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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~ ~ ~ February 4, 2003, (Tape 2), After Agenda Item:

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

Mr. Pammel moved to approve 18 months of additional time. Mr. Hammack and Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new expiration date was August 16, 2004.

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~ ~ ~ February 4, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
Mount Vernon Congregation of Jehovah's Witnesses, SP 99-V-013

Mr. Pammel moved to approve 11 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new expiration date was December 6, 2003.

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~ ~ ~ February 4, 2003, (Tape 2), After Agenda Item:

Request for Reconsideration  
Nasr and Shaista Chaudhry, VC 2002-HM-155

Mr. Hammack stated that he had received a call from Mr. Radigan following the hearing on January 21, 2003. He stated that Mr. Radigan explained reasons to grant a reconsideration, namely, that the homeowners associations had adopted covenants, which might or might not be valid, which would make the Chaudhrys in violation if they were to comply with the Board's resolution.

Mr. Hammack stated that the resolution would require the removal of a couple of trees if they pulled the fence in along the berm and also that Mr. Radigan had referred the Chaudhrys to a landscape architect to come up with a solution. Mr. Hammack stated that the resolution did not deal with the way the fence tied in with the entrance feature and given that there would be a landscape architect involved, that it would be an appropriate case to grant a reconsideration.

Mr. Hammack moved to approve the reconsideration request for VC 2002-HM-155.

Ms. Gibb seconded the motion. She asked if the application would be readvertised. Ms. Langdon stated that it would require readvertisement. Mr. Pammel noted that it would be at the County's expense.

Ms. Gibb questioned the time period. Ms. Langdon suggested a date of April 8, 2003. Mr. Hammack stated that the applicant could even be granted more time if staff so needed.

Chairman DiGiulian stated that he would like to have the applicant pay for readvertising expenses.

Mr. Pammel stated that he could not support the motion because a new application, and all costs associated with a new application, should be required by the applicant.

The Board discussed the fence issue and the reconsideration at length.

Mr. Pammel stated that the applicant should submit a new application and go through the process again, giving adequate time to coordinate with all the parties involved and come back to the Board.

Chairman DiGiulian asked Mr. Hammack to add to his motion that the applicant pay for readvertisement cost.

Ms. Gibb noted that the applicant could also maintain their previous approval and not come back to the Board at all.

Mr. Hammack stated that because the applicant was required to submit a revised plat, the original resolution was, therefore, not approved at the previous Board meeting.

The motion failed with a vote of 2-4. Ms. Gibb, Mr. Ribble, Mr. Pammel, and Mr. Hart voted against the motion.

Mr. Hammack moved to waive the 12-month waiting period for the applicant to submit a new application. Mr. Pammel and Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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~ ~ ~ February 4, 2003, (Tape 2), After Agenda Item:

Approval of January 28, 2003 Resolutions

Mr. Pammel moved to approve the January 28, 2003 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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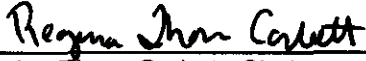


~ ~ ~ February 4, 2003, continued from Page 232


As there was no other business to come before the Board, the meeting was adjourned at 11:04 a.m.

Minutes by: Deborah A. Hedrick

Approved on: May 4, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 11, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; James Hart; Robert Kelley; James Pammel and John Ribble. Mr. Hammack 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

~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. CLAUDIA MARGAIN BROWN, VC 2002-PR-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height and accessory structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 2352 Cedar La. on approx. 25,018 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((1)) 34C. (Concurrent with SP 2002-PR-055). (Admin moved from 12/17/02 for notices)

9:00 A.M. CLAUDIA MARGAIN BROWN, SP 2002-PR-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 accessory structure to remain 7.8 ft. and 8.3 ft. from side lot lines. Located at 2352 Cedar La. on approx. 25,018 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((1)) 34C. (Concurrent with VC 2002-PR-161). (Admin moved from 12/17/02 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. Claudia Brown, 2352 Cedar Lane, Vienna, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested approval to permit an accessory structure, a playhouse, to remain in the front yard of a lot containing 36,000 square feet or less. The applicant requested approval to permit a fence 6.0 feet in height, to remain in the front yard of a through lot. A 35 foot arc from Hilltop Avenue was deemed a front yard on the site. A maximum fence height of 4.0 feet is permitted; therefore, a variance of two feet was requested.

The applicant also requested a reduction to the minimum yard requirements based on error in building location to permit an accessory structure, a storage shed, to remain 7.8 feet and 8.3 feet from the side lots lines. The minimum required side yard is 15 feet; therefore, modifications of 7.2 feet and 6.7 feet was requested.

Ms. Brown presented the requests as outlined in the statement of justification submitted with the application. She said she was aware of the 150 foot limit on sheds in the yard. Ms. Brown stated that she purchased sheds that were smaller than that. She said they were cedar sheds that could be used as a playhouse so they would not be an eyesore to the community and match the house. Ms. Brown indicated that the front yard was wooded and there was a slant in the topography.

Mr. Hart asked if the shed could be relocated behind the house. Ms. Brown said that would not be possible because of the slanted terrain.

Chairman DiGiulian called for speakers.

James Stark, 2354 Cedar Lane, came forward to speak in opposition. He said the shed was exceptionally close to the property line and blocked his view from the window. Mr. Stark said he had discussed the possibility of moving the shed with the applicant. He gave a proposal that the shed be moved closer to the street and any trees on the property, within 10 feet of the shed, be removed and that three 6-foot tall mature evergreen trees, of his choosing, be planted by a professional landscaping company to obscure the shed, with all costs being paid by the applicant.

Ms. Brown said she was under the impression that the problem with the shed was a safety issue. She said she discovered the night before that the neighbor considered it an eyesore. Ms. Brown said moving the shed would work but she did not think she should have to move the shed and spend money to hide it. She said the shed was pretty and in the new location, it should not be as big of an eyesore to the neighbor.

~ ~ ~ February 11, 2003, CLAUDIA MARGAIN BROWN, VC 2002-PR-161 and SP 2002-PR-055, continued from Page 235

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2002-PR-055 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CLAUDIA MARGAIN BROWN, SP 2002-PR-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 accessory structure to remain 7.8 ft. and 8.3 ft. from side lot lines. Located at 2352 Cedar La. on approx. 25,018 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((1)) 34C. (Concurrent with VC 2002-PR-161). (Admin moved from 12/17/02 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 11, 2003; 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.

~ ~ ~ February 11, 2003, CLAUDIA MARGAIN BROWN, VC 2002-PR-161 and SP 2002-PR-055, continued from Page 236

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

1. This Special Permit is approved for the location of the accessory structure shown on the plat prepared by Suburban Development Engineering, dated December 10, 1999, as revised through October 4, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned 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 4-0. Mr. Kelley and Mr. Ribble were not present for the vote. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 26, 2003. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to deny VC 2002-PR-161 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CLAUDIA MARGAIN BROWN, VC 2002-PR-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height and accessory structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 2352 Cedar La. on approx. 25,018 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((1)) 34C. (Concurrent with SP 2002-PR-055). (Admin moved from 12/17/02 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 11, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has not met the required standards for the granting of variance.
3. The structure visually impacts the adjacent property.
4. The applicant should have checked with the County with respect to the requirements for locating sheds.
5. The fence on Hilltop Avenue will have to be moved back to the prescribed distance as set forth in the Ordinance.

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;

~ ~ ~ February 11, 2003, CLAUDIA MARGAIN BROWN, VC 2002-PR-161 and SP 2002-PR-055, continued from Page 237

- F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 4-0. Mr. Kelley and Mr. Ribble were not present for the vote. Mr. Hart moved to waive the 1-year waiting period for refiling an application. 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 February 26, 2003.

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~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. ROBINETTE, VC 2002-HM-188 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 20.30 ft. and permit dwelling 17.3 ft. from front lot line. Located at 1847 Hunter Mill Rd. on approx. 2.01 ac. of land zoned R-1. Hunter Mill District. Tax Map 27-2 ((1)) 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.

Ken Sanders, Agent, came forward and indicated that there was a problem with the affidavit. He also stated that he would like to meet with the citizens.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that if there was not an approved affidavit, the application could not go forward.

Mr. Hart moved to defer VC 2002-HM-188 to February 25, 2003 at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote, and Mr. Hammack was absent from the meeting.

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~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT ALDERSON, VC 2002-SP-190 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 36.79 ft. from front lot line. Located at 6330 Little Ox Rd. on approx. 1.5 ac. of land zoned R-1. Springfield District. Tax Map 77-3 ((2)) 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. David Guglielmi, agent, 2951 Sutton Road, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a dwelling to remain 36.79 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, a variance of 3.21 feet was requested.

Chairman DiGiulian asked if the variance request could have been done administratively. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it could not have been done administratively because the property was not taken by the State. If it was taken by the State, then it could have qualified for an administrative approval, but because it was donated, it did not fall under the 20% reduction.

Mr. Guglielmi presented the variance request as outlined in the statement of justification submitted with the application. He said they were attempting to develop the property next to the subject property, but in order to do that they needed a viable drain field. Mr. Guglielmi stated that they were performing a simple subdivision on the applicant's property so that the drain field would become part of his property; but, in order to do that the County required dedication of 3 feet along the front of the applicant's property. He said the 3 feet came from the misalignment of Little Ox Road. Mr. Guglielmi stated that the applicant would then be within the front yard setback.

Mr. Hart asked staff if the BZA was only considering the lot that had the house on it. Ms. Langdon replied yes.

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

Mr. Hart moved to approve VC 2002-SP-190 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT ALDERSON, VC 2002-SP-190 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 36.79 ft. from front lot line. Located at 6330 Little Ox Rd. on approx. 1.5 ac. of land zoned R-1. Springfield District. Tax Map 77-3 ((2)) 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 February 11, 2003; 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. As a result of the dedication along Little Ox Road, a slight variance is needed to permit the existing house to remain.
4. With the existing vegetation and site conditions there would not be any detrimental impacts.

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

~ ~ ~ February 11, 2003, SCOTT ALDERSON, VC 2002-SP-190, continued from Page 239

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Robert Nelson, dated July 16, 2002, as revised by Ibrahim A. Chemab dated through November 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.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote, and Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ALLEN D. & MARY R.C. FORD, VC 2002-LE-199 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from side lot line. Located at 3433 Memorial St. on approx. 22,456 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((15)) A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning



~ ~ ~ February 11, 2003, ALLEN D. & MARY R.C. FORD, VC 2002-LE-199, continued from Page 240

Appeals (BZA) was complete and accurate. Andy Cashman, Agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a second story addition over an existing garage 10.9 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 4.1 feet from the side lot line was requested.

Mr. Cashman presented the variance request as outlined in the statement of justification submitted with the application.

Ms. Gibb asked if the addition would extend further into the side yard than the existing structure. Mr. Cashman replied no.

Mr. Cashman submitted a letter in support of the application.

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

Mr. Ribble moved to approve VC 2002-LE-199 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALLEN D. & MARY R.C. FORD, VC 2002-LE-199 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from side lot line. Located at 3433 Memorial St. on approx. 22,456 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((15)) A. 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 11, 2003; 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.

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

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

the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

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

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

1. This variance is approved for the location of a second-story addition shown on the plat prepared by Phillip A. Blevins, dated November, 2002, as revised through January 16, 2003, 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. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      FREDERICK C. LEE & CONNIE J. REID, VC 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in front yard and 7.0 ft. in a side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land Zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (def. from 1/14/03)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Connie Reid, 8214 Robey Avenue, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a fence greater than 4.0 feet in height in a front yard and 7.0 feet in a side yard. Ms. Stanfield stated that the application had been deferred from January 14, 2003, for the BZA to receive additional information. She indicated that Tammy Brown from Zoning

~ ~ ~ February 11, 2003, FREDERICK C. LEE & CONNIE J. REID, VC 2002-MA-176, continued from Page 242

Enforcement was present to answer questions from the Board. Ms. Stanfield stated that Ms. Brown had conducted two investigations on the adjacent property and issued two notices of violation for fences in the front yard and the side yard.

Ms. Gibb asked Ms. Brown to explain what was found. Ms. Brown replied that the side fence was chain link and the front was a wooden fence.

Ms. Reid presented the variance request as outlined in the statement of justification submitted with the application. She said after the first hearing, they sent a letter to the BZA indicating how they felt that their request met the required standards for a variance. Ms. Reid said included in the letter was a rendering of how uniquely their house was situated on the lot in relation to the adjacent house. She said the front of their house was more than 70 feet back from the front of 8220 Robey Avenue. Ms. Reid said when the fronts of adjacent properties differ in distance from the street, the side yard of one property essentially becomes the front yard of another. Because the 4.0 foot height restriction applies to the front yard, she asked how her neighbor could erect a 7 foot high fence in their front yard and they needed a variance to build one next to his side yard. Ms. Reid stated that the previous summer her neighbors illegally removed 800 square feet of evergreen bushes from VDOT property and because of this action her property was left with no screening from the road. She stated that the proposed fence would extend to Robey Road and although the road was considered a State road, VDOT did not provide any maintenance. She said she was concerned that her property value would drop if she could not install a fence to screen her property from the many construction projects that the neighbor undertakes, such as removal of asbestos siding, with no permits from Fairfax County. She informed the Board that her neighbor kept construction vehicles in the backyard and the property was an eyesore.

Mr. Pammel requested that staff investigate the neighbors for allegedly removing asbestos siding without following the proper guidelines. He asked for a report regarding the fact that VDOT was not providing maintenance on a State road.

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

FREDERICK C. LEE & CONNIE J. REID, VC 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in front yard and 7.0 ft. in a side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (def. for decision from 1/14/03) 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 11, 2003; and

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

1. The applicants are the owners of the land.
2. The applicant has demonstrated some necessity for the fence.
3. The house is sited angling towards the rear yard of the neighbor's house.
4. There is no issue with sight distance or aesthetics because the property is located on a dead end street.
5. The neighbor's chain link fence is not an issue as a Notice of Violations has been issued with respect to the height being over 4.0 feet.

~ ~ ~ February 11, 2003, FREDERICK C. LEE & CONNIE J. REID, VC 2002-MA-176, continued from Page 243

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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. Notwithstanding what is shown on the plat prepared by George M. O'Quinn, dated September 30, 2002, submitted with this application, this variance is approved for the location of a seven foot high fence along the western lot line from the rear lot line to a point opposite the front of the dwelling on Lot 22. This approval 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. 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 February 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ALI & KAMRAN GERAYLI, SP 2002-HM-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.6 ft. from side lot line and 8.7 ft. from rear lot line. Located at 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with VC 2002-HM-147). (Admin moved from 11/26/02 for notices) (Def from 1/21/03)

9:00 A.M. ALI & KAMRAN GERAYLI, VC 2002-HM-147 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 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with SP 2002-HM-050). (Admin moved from 11/26/02 for notices) (Def from 1/21/03)

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. Kamran Gerayli, 11100 Baron Cameron Avenue, Reston, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an accessory structure to remain 4.6 feet from a side lot line and 8.7 feet from a rear lot line. The Zoning Ordinance requires a minimum side yard of 20 feet and a minimum rear yard of 9.0 feet; therefore, modifications of 15.4 feet and 0.3 feet were required.

The applicant also requested a variance to permit a fence greater than 4.0 feet in height to remain in a front yard. The plat illustrated that the fence varied in height from 5.0 feet to 7.5 feet and had columns up to 7.0 feet in height.

Mr. Gerayli presented the requests as outlined in the statements of justification submitted with the applications. He explained that he had constructed the fence several years prior and it consisted of wrought iron with stucco columns. He said he was unaware that he exceeded the height limitations required by the County.

Mr. Hart asked the applicant if the shed was being used to house chickens. Mr. Gerayli replied that he no longer had chickens and the shed was used for storage purposes. Mr. Hart asked the applicant why the shed could not be located toward the middle of the property. Mr. Gerayli explained that the septic system was located on one side of the property and the garden was located on the other and there would not be adequate space for the shed in that area. Mr. Hart asked the applicant if there were any utilities connected to the shed. Mr. Gerayli stated there were none. Mr. Hart asked the applicant if he had read the letter in opposition. Mr. Gerayli replied that he had and explained that he was unaware of the side yard restriction when he constructed the shed.

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

Mr. Kelley moved to deny SP 2002-HM-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

ALI & KAMRAN GERAYLI, SP 2002-HM-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.6 ft. from side lot line and 8.7 ft. from rear lot line. Located at 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with VC 2002-HM-147). (Admin moved from 11/26/02 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

~ ~ ~ February 11, 2003, ALI & KAMRAN GERAYLI, SP 2002-HM-050 and VC 2002-HM-147, continued from Page 245

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 2003; 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 met the required standards for a special permit.
3. The shed could be moved.

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**.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 26, 2003.

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Mr. Kelley moved to approve VC 2002-HM-147 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI & KAMRAN GERAYLI, VC 2002-HM-147 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 11100 Baron Cameron Ave. on approx. 1.11 ac. of land zoned R-E. Hunter Mill District. Tax Map 12-3 ((1)) 23. (Concurrent with SP 2002-HM-050). (Admin moved from 11/26/02 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 February 11, 2003; 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. There is no opposition to the fence.

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

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

~ ~ ~ February 11, 2003, ALI & KAMRAN GERAYLI, SP 2002-HM-050 and VC 2002-HM-147, continued from Page 246

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Charles R. Johnson, dated August 20, 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 5-0. Chairman DiGiulian was not present for the vote, and Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:30 A.M. JM DEVELOPMENT, LLC, A 2002-SP-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that zoning approval for Building Permit issuance cannot be granted for appellant's lot pursuant to Sect. 18-603 of the Zoning Ordinance absent verification that the lot was created in conformance with applicable Subdivision regulations. Located at 7101 Centreville Rd. on approx. 27,647 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 65-3 ((1)) 91.

Stephen Fox, agent for the appellants, stated that the subject appeal was similar to a case he had presented to the Board of Zoning Appeals (BZA) the previous summer where the question was whether, under Section

2-405 of the Zoning Ordinance, the lot which pre-existed the then-current zoning regulations was a buildable lot and that the BZA held that it was a buildable lot.

Mr. Fox stated that the lot in the subject appeal was created in 1928 by a deed recorded in the land records of the Circuit Court of Fairfax County and that the Clerk of the Court attested that the lot was recorded with the plat attached. He explained that during that period of time the Ordinance mandated that a Clerk could not admit to record any subdivision without an approved plat, but that the plat could not currently be found. He contested that the Zoning Administrator was holding the landowner to a standard which required the landowner to ensure the integrity of the public records for a period greater than 75 years. Mr. Fox stated that the plat was admitted to record, the Clerk attested to that fact, and the testimony of the Clerk of the Court should be relied upon. He submitted tax maps from 1961, 1965, 1969, 1975, 1980, and the current map to illustrate that the lot appeared on tax maps. He stated that the lot had been assessed and even condemned for the widening of Route 28. He explained that although the lot was currently designated Lot 91, it had at one time been known as Lot 58, and he contended the lot met all of the standards of the first Subdivision Ordinance.

Mr. Fox said the Zoning Administrator would indicate that a lot which existed prior to the Zoning Ordinance met the standards of 2-405, but that evidence must exist that it had been properly subdivided. Mr. Fox stated that 2-405 was intended to be the curative provision and that there was no indication in 2-405 or 18-603 that there was any intent there be any curative provision other than 2-405. He said that the text of 2-405 used the term lot, which was a defined term in the Subdivision Ordinance and the Zoning Ordinance, and that 2-405 said that if it met the requirements of the Zoning Ordinance in effect at the time of its recordation, then such lot, as a single lot or in combination with such other lots, pursuant to a building permit, could be used for any use permitted in the Zoning District even though the lot did not meet the minimum district size, lot area, and/or width requirement. Mr. Fox said 18-603 of the Subdivision Ordinance stated that unless the intent was clearly shown otherwise, the Subdivision Ordinance must be used, and he said the intent was clearly shown otherwise in the Zoning Ordinance, which addressed all the issues.

Mr. Fox explained that two similar neighboring lots were issued building permits and had houses built on them. He submitted to the Board his letter with the attached exhibits that had been submitted to the Zoning Administrator. He stated that the exhibits were not included in the staff report. Mr. Fox pointed out that Exhibit 3 was a current and proposed plat of development for Lot 91 illustrating that all of the setback requirements were met. He informed the Board that a septic permit had been approved and VDOT had issued an entrance permit. He urged the Board to find the lot was buildable and that it be certified as such for issuance of a building permit.

Mr. Hart said the history of the lot revealed that it originated from a larger parcel and asked Mr. Fox if the neighboring parcels generated from the same large parcel. Mr. Fox referred to Mr. Etheridge, JM Development. Mr. Etheridge explained that the property was originally subdivided in 1928 and all of the lots generated from that parcel. Mr. Hart asked if there was a plat recorded with any of the other lots. Mr. Etheridge stated that he did not research any of the other lots.

Ms. Gibb stated that as of the 1988 Ordinance, the Clerk could not record a plat and a deed of dedication and could not record a description of any deed of dedication for any subdivision until a plat had been approved by a County Engineer. She said in many cases deeds were recorded by describing lots by metes and bounds and as long as they had frontage on a street a plat was not required. She said her opinion was that the lot was legal.

Mr. Hart asked staff but for the absence of a plat attached to the 1932 Deed, staff would say the lot was legal. William E. Shoup, Deputy Zoning Administrator, explained that the plat had to contain an endorsement that was approved by certain officials of the County.

Susan Epstein, Staff Coordinator, stated staff's position was that the lot did not satisfy the criteria of 18-301 of the Zoning Ordinance. She contended that the appellants had not presented any information that the lot was buildable and had not asked DPWES whether the lot met the Subdivision Ordinance requirements, as they were the correct body to make that determination.

Mr. Shoup informed the Board that the Board of Supervisors had authorized an amendment to the



~ ~ ~ February 11, 2003, JM DEVELOPMENT, LLC, A 2002-SP-039, continued from Page 248

Subdivision Ordinance which would validate the lot in question if it were adopted as proposed. He said the amendment was scheduled to go before the Board on March 10<sup>th</sup>.

Chairman DiGiulian called for speakers.

Kimberly Skokan, 7109 Centreville Road, came forward to speak in support of the application. She stated that she was in support of construction on the lot.

Mr. Shoup stated that the appellant was requesting the Board to make a finding on the Subdivision Ordinance and it was not an issue to be acted upon by the Board. He stated that staff had not taken a position on the legality of the lot.

Ms. Gibb stated that staff had made a determination that the lot was not buildable and the Board had the authority to rule on that issue. She stated she was convinced it was a legal lot.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that he agreed with Ms. Gibb that the lot was legal. Mr. Pammel moved to reverse the determination of the Zoning Administrator regarding appeal A 2002-SP-039. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 11, 2003, (Tape 1), Scheduled case of:

9:30 A.M.      CHANTILLY YOUTH ASSOCIATION (CYA), A 2002-SU-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that, in accordance with Sect. 14-903 of the Zoning Ordinance, proposed ball field lighting on subject property located in the R-1 District cannot exceed 0.5 foot candles at the property boundaries. Located at 4000 Stringfellow Rd. on approx. 20.97 ac. of land zoned R-1 and WS. Sully District. Tax Map 45-1 ((1)) 7 pt.

This appeal was administratively moved to March 25, 2003 at 9:30 a.m.

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~ ~ ~ February 11, 2003, (Tape 1), After Agenda Item:

Approval of February 4, 2003 Resolutions

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

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As there was no other business to come before the Board, the meeting was adjourned at 10:41 a.m.

Minutes by: Regina Thorn Corbett / Lori M. Mallam

Approved on: June 8, 2004

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John F. Ribble III*  
John F. Ribble III, Vice Chairman, for  
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, February 25, 2003. The following Board Members were present: John DiGiulian, John Ribble, Nancy Gibb, James Hart, Robert Kelley and James Pammel. Paul Hammack 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.

~ ~ ~ February 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JIAN LIU AND LIMIN CHENG, VC 2002-DR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.4 ft. from front lot line. Located at 6740 Churchill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (C) 21.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jian Liu Cheng, 6740 Churchill Road, McLean, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested construction of an addition 24.4 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 30.0 feet; therefore, a variance of 5.6 feet was requested.

Peter Lednakus, Contractor, 9126 Crocklewood Court, Vienna, Virginia, came to the podium to speak on behalf of the applicants. He stated that the lot was an unusual shape and that the garage in its current location was on a grade that posed a problem with icing in the winter. He stated that they could not use their existing garage because of the angle and asked for the Board's approval of the application.

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

Mr. Pammel moved to approve VC 2002-DR-194 for the reasons as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JIAN LIU AND LIMIN CHENG, VC 2002-DR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.4 ft. from front lot line. Located at 6740 Churchill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (C) 21. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2003; 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 shape of the lot requires the need for the variance.
4. The variance application had been before the Board and approved under VC 1999-D-184, which subsequently expired without further activity 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, shown on the plat prepared by Thomas G. Gilbert, dated October 8, 1999, 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. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. HEATHER L. CARROLL, SP 2002-SP-066 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 5855 Kara Pl. on approx. 3,350 sq. ft. of land zoned R-8 (Cluster). Springfield District. Tax Map 78-4 ((7)) 14.

Chairman DiGiulian noted that the application had been administratively moved to March 11, 2003, at 9:00 a.m.

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~ ~ ~ February 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KARL J. FRYXELL, SP 2002-BR-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line and dwelling 10.1 ft. from side lot line. Located at 4405 Alta Vista Dr. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 148. (Admin moved from 1/28/03).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Karl Fryxell, 4405 Alta Vista Drive, Fairfax, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. She stated that the applicant requested a reduction to the minimum yard requirements based on error in building location to permit a shed to remain 2.0 feet from the rear lot line and a garage 10.1 feet from the side lot line. The Zoning Ordinance requires a minimum rear yard of 12.6 feet and a minimum side yard of 12.0 feet; therefore, modifications of 10.6 feet and 1.9 feet respectively, were requested.

Mr. Fryxell presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Fryxell stated that both structures were constructed by the previous owner in 1984 and that he purchased the property in good faith in 1997. Mr. Fryxell stated that he had copied all permits from the previous owner which were received on the property. He stated that the shed was inspected in 1997 for an electrical permit and the garage received building and electrical permits in 1984. He stated that his property abutted a public school site with a wooded ravine and therefore, the shed would not affect the adjacent property owners with respect to visibility or access. Mr. Fryxell stated that his neighbor received an approval by the Board on April 17, 2001, of an error in building permit for the exact same shed on his property. He stated that the shed was elevated above the ground on six concrete footers and believed that it would be a difficult task and expense to remove the shed. Mr. Fryxell stated that in regard to the garage, a permit was obtained. He stated that his lot was narrow and deep in comparison to other lots in the neighborhood. He stated that moving the garage would be impossible because half of the garage was below grade and therefore, requested the Board's approval of both structures.

Mr. Hart asked if the shed's measurements took into account the distance from the property line to the wall or to the overhang. Mr. Fryxell stated that the overhang was on the front and side of the shed only.

Mr. Hart expressed concern getting around the back of the shed to paint the wood siding. Mr. Fryxell stated that there was a 2.0 foot clearance behind the shed to the fence line and that it was possible to move around the shed.

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

Mr. Hart moved to approve SP 2002-BR-064 for the reasons as stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

KARL J. FRYXELL, SP 2002-BR-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line and dwelling 10.1 ft. from side lot line. Located at 4405 Alta Vista Dr. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 148. (Admin moved from 1/28/03). 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 25, 2003; 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 shed and garage addition shown on the plat prepared by Highlander Surveying Services P.C. dated September 12, 1997, revised through November 4, 2002, submitted with this application and is not transferable to other land.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with

~ ~ ~ February 25, 2003, KARL J. FRYXELL, SP 2002-BR-064, continued from Page 254

the provisions of any applicable ordinances, regulations, or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ February 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. ROBINETTE, VC 2002-HM-188 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 20.30 ft. and permit dwelling 17.3 ft. from front lot line. Located at 1847 Hunter Mill Rd. on approx. 2.01 ac. of land zoned R-1. Hunter Mill District. Tax Map 27-2 ((1)) 5. (def. from 2/11/03)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ken Sanders, 3905 Railroad Avenue, Fairfax, Virginia, replied that it was.

Mr. Sanders stated that a letter was distributed to staff requesting a deferral of the public hearing. He stated he had met with several residents regarding issues with the application and that due to the weather, asked for a deferral to permit his engineer an opportunity to survey the property and address the neighbors' concerns, especially regarding drainage on the property.

Mr. Pammel moved to defer the public hearing to April 8, 2003, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN A. & DOROTHEA E. SUTTON, VC 2002-SU-195 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from rear lot line. Located at 13554 Point Pleasant Dr. on approx. 11,500 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 45-3 ((3)) 105.

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 Sutton, 13554 Point Pleasant Drive, Chantilly, Virginia, replied that it was.

Lindsay Shulenberger, Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested an addition 9.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 15.6 feet was required.

Kenneth Reed, Architect, RK Architects, 9411 Lee Highway, Fairfax, came to the podium to speak on behalf of the applicants. He stated that the addition would be an extension of the kitchen. He stated that the house was a one story home with a basement in ground and that the lot was a pipestem lot with a long drive with the longest side of the lot being considered the front lot line. He stated that the lot was narrow and the house was setback and angled on the lot; therefore, requiring the need for the variance.

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

Mr. Ribble moved to approve VC 2002-SU-195 as stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

JOHN A. & DOROTHEA E. SUTTON, VC 2002-SU-195 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from rear lot line. Located at 13554 Point Pleasant Dr. on approx. 11,500 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 45-3 ((3)) 105. 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 25, 2003; 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. Only one portion of the addition requires the need for the variance.
4. The citing of the house on the lot and the shape of the lot causes the need for the variance.
5. The lot abuts Fairfax County parkland.

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

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

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

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



~ ~ ~ February 25, 2003, JOHN A. & DOROTHEA E. SUTTON, VC 2002-SU-195, continued from Page 256

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 Kenneth J. Reed of R K Architects, P.C., dated October 29, 2002, as revised through November 26, 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. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ February 25, 2003, (Tape 1), After Agenda Item:

Approval of May 14, 2002 Minutes

Mr. Kelley moved to approve the May 14, 2002 Minutes. Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained, stating that he was not present at the hearing. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 25, 2003, (Tape 1), After Agenda Item:

Approval of Revised Plat  
Nasr and Shaista Chaudry – VC 2002-HM-155

Ms. Gibb moved to defer the item to March 4, 2003, due to the fact that Mr. Hammack was not present at the meeting and it was his original motion. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 25, 2003, (Tape 1), After Agenda Item:

Action Item for February 18, 2003  
Request for Reconsideration by Connie J. Reid – VC 2002-MA-176

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the applicant was not present, however, had submitted a letter to the Board with her justification for the reconsideration.

Chairman DiGiulian noted that a motion was not made; and therefore, the request was denied.

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~ ~ ~ February 25, 2003, (Tape 1), After Agenda Item:

Action Item for February 18, 2003  
Request for Reconsideration by Claudia M. Brown – VC 2002-PR-161

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the applicant was present if the Board would like to speak with her.

Claudia Brown came to the podium and stated that she had submitted a letter and colored photographs to the Board outlining the Request for Reconsideration. She requested that the Board allow her to keep her 6-foot high fence and listed her reasons; she considered her front yard her back yard, which was fenced; it did not affect anyone's view; it did not affect the landscaping; Hilltop was not a heavily traveled road; and, she had two large dogs. She stated that if the fence was lowered to 4 feet it would be below street level because her property was on a hill. She stated that she purchased the property with the fence existing. She apologized to the Board for not being better prepared at the public hearing and asked the Board for their reconsideration. Ms. Brown explained that her biggest concern when she purchased her sheds was that she concentrated on the 200 square foot requirement. She stated that she had no problem moving her shed so her neighbor would be satisfied; however, she did not want to get rid of the shed because she considered it a playhouse and spent a large sum of money to have the shed. She stated that the shed/playhouse was hidden from the street by existing trees. Ms. Brown stated that her neighbor agreed to two alternative locations to include the planting of trees or bushes on his property. She stated that she could not afford to do this to her neighbors' property; however, she would accommodate this request on her own property. She also offered to work with her neighbor if a reconsideration was granted.

Mr. Hart moved to waive the one-year waiting period for refilling a new application, however, stated that he was unsure of supporting a reconsideration.

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

Mr. Kelley and Mr. Ribble supported the motion, however, stated that they did not want the applicant to have false hope.

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~ ~ ~ February 25, 2003, (Tape 1), After Agenda Item:

Action Item for February 18, 2003  
Approval of February 11, 2003 Resolutions

Mr. Pammel moved to approve the February 11, 2003 Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 25, 2003, (Tape 1), After Agenda Item:

Action Item for February 18, 2003  
Consideration of Acceptance - Application for Appeal – Peter W. and Leslie L. Berk

Mr. Hart recused himself from the consideration request.

William Shoup, Deputy Zoning Administrator, reviewed his February 10, 2003, memorandum with the Board stating that staff did not concur with the appeal application stating that it was not properly filed and therefore it should not be accepted. Mr. Shoup stated that the lot was not a legal lot under the Subdivision Ordinance and that Section 18-301 of the Zoning Ordinance allowed any person aggrieved by the Zoning Administrator under the Zoning Ordinance to appeal to the Board of Zoning Appeals. The Subdivision Ordinance could not be appealed to the Board of Zoning Appeals, and therefore, asked the Board to deny the request for appeal. Mr. Shoup noted that there were two other appeals on the same issue scheduled for the March 11, 2003, public hearing.

~ ~ ~ February 25, 2003, AFTER AGENDA ITEMS, continued from Page 258

Ms. Gibb asked what the remedy would be for the applicant if the Board's decision was the only determination. Mr. Shoup stated that it would then require a decision by the Circuit Court because there was no appeal provisions established under the Subdivision Ordinance.

Mr. Shoup stated that since it had been determined that the lot wasn't created in accordance with the Subdivision Ordinance, a building permit could not be issued; therefore, the lot is not buildable. Mr. Shoup reviewed all three appeal requests with the Board.

Lynne Strobel, Attorney, stated that the other appeals were accepted to be heard by the Board and asked the Board to do the same with this application.

Mr. Pammel expressed his desire that either staff or the appellant obtain information showing where the Clerk of the Court accepted the plat of recordation and the metes and bounds information.

Ms. Gibb stated that it was her opinion that a plat was not required prior to 1948 and that she was unsure if it was required after 1948.

Mr. Kelley moved to accept the appeal. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Mr. Hammack was absent from the meeting.

Mr. Shoup noted that given the timing of notification the appeal could not go forward for the March 11, 2003 hearing.

Ms. Strobel stated that her client received a demolition permit from the County and had been told he was unable to build another home and therefore, she requested that the prior two appeals move forward as scheduled and requested that this hearing be scheduled one to two weeks later.

Mr. Shoup suggested April 1, 2003, stating that it would give staff sufficient time to meet notification and advertisement requirements.


Mr. Kelley moved to schedule the appeal for April 1, 2003, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. 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 9:50 a.m.

Minutes by: Deborah A. Hedrick

Approved on: September 16, 2003



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 4, 2003. The following Board Members were present: Vice Chairman John Ribble; Robert Kelley; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. Chairman 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

~ ~ ~ March 4, 2003, (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 and 10/22/02. Def from 11/12/02 and 1/21/03 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. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Avenue, Arlington, Virginia, replied that it was.

Mr. Hart made a disclosure that would not affect his participation in the hearing.

Tracy Swagler, Rezoning and Special Exception Branch, stated that the case was deferred for decision only from January 21, 2003. The applicant requested a variance to allow a retail structure to remain 11.5 feet from the side lot line and a greenhouse to remain 10.8 feet from the side lot line. The Zoning Ordinance requires a side yard of 20 feet; therefore, variances of 8.5 feet and 9.2 feet were requested.

Mr. Pammel asked staff what the outcome was regarding the service drive. Ms. Swagler stated that the Board of Supervisors waived the service drive requirement across the entire frontage of the property.

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

Mr. Pammel moved to approve VC 2002-DR-057 with revised development conditions for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

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-DR-012). (Def from 10/1/02 and 10/22/02. Def from 11/12/02 and 1/21/03 for dec. 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 March 4, 2003; 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 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 the retail structure and greenhouse shown on the plat prepared by Planning & Development Services, Inc., dated March 20, 2002, as revised through August 9, 2002, which was submitted with this application, and is not transferable to other land.
2. There shall be no access, either vehicular or pedestrian from Bowen Avenue to the application property.
3. Building permits for all buildings shall be obtained, and approval of final inspections shall be obtained prior to the issuance of a new Non-Residential Use Permit.

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

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 March 12, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KHAN INTERNATIONAL, LLC, SP 2002-MV-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit building to remain 10.0 ft. from rear lot line. Located at 9308 Gunston Cove Rd. on approx. 34,578 sq. ft. of land zoned C-5. Mt. Vernon District. Tax Map 107-4 ((1)) 11A. (Admin moved from 11/12/02 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. David Hunter, P.O. Box 2344, Woodbridge Virginia, replied that it was.

Peter Braham, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit for reduction to minimum yard requirements based on error in building location to permit a building to remain 10.0 feet from the rear lot line. The Zoning Ordinance requires a rear yard of 20 feet; therefore, the error was 10.0 feet. The previous owner was operating a fast food establishment on the property which was a violation of the Zoning Ordinance. The current owner has discontinued the fast food use and brought the property into compliance.

Mr. Hammack asked staff if there was commuter parking to the rear of the building. Mr. Braham replied there was. Mr. Hammack asked staff if there was a rear door. Mr. Braham answered the doors to the building were on the opposite side of the building.

Mr. Hunter, 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 purchased the property and the property was in violation at that time for having a fast food restaurant operating on the property. He said after meeting with staff it was determined that the fast food use could not operate on the site and the applicant ceased the fast food use. He stated that the applicant had hired the contractor in good faith and relied on him to acquire the proper permits and to abide by all County regulations. He said the contractor had absconded with approximately 30,000 dollars of the applicant's money. He stated that the applicant was in agreement with all of the conditions and requested that the Board approve the application.

Mr. Hammack asked the applicant for a copy of the contract between the applicant and the contractor. Mr. Hunter stated that he did not have a copy of the contract. Mr. Hammack asked the applicant if there was written contract. Mr. Hunter replied that there was evidence of a letter between the two parties but not an actual written contract.

Mr. Hammack asked staff if there was an application for a building permit. Mr. Braham replied that the contractor had filed for a building permit; however, it had not been pursued.

Mr. Hammack asked if the building permit application was submitted before the building was constructed. Mr. Hunter stated that he would obtain that information and report back to the Board at a later date.

Vice Chairman Ribble discovered that the names of the owners of Kahn International, LLC were missing from the affidavit and requested that the applicant provide the Board with a revised affidavit.

Mr. Hammack asked the applicant to obtain a copy of the building permit application and submit it to the Board at the next hearing date.

There were no speakers.

Mr. Hammack moved to continue SP 2002-MV-032 to March 25, 2003, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ March 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BAHRAM SHAHRIARI, VC 2002-PR-159 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 2000 Woodford Rd. on approx. 24,416 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((1)) 43. (Admin moved from 12/17/02)(Def. for decision only from 2/4/03)

~ ~ ~ March 4, 2003, BAHRAM SHAHRIARI, VC 2002-PR-159, continued from Page 263

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. Bahram Shahriari, 2000 Woodford Road, Vienna Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. On February 24, 2003, the Board deferred decision on the application to the current date. The applicant requested a variance to permit a fence greater than 4.0 feet in height to remain in a front yard. The Board requested that the applicant consider a relocation of the fence along Rainbow Road.

Mr. Shahriari presented the variance request as outlined in the statement of justification submitted with the application. He explained that his property was adjacent to Rainbow Road, which was a one-lane dirt road that provided access to six lots and two of the six were deemed not buildable. He said one adjacent neighbor was approved for a six foot fence which currently exists. Mr. Shahriari stated the Board was concerned about site distance with regard to the proposed fence. He offered to increase a slant for the fence along the road to allow a clear view from the road and to remove three cypress trees from the fence area. He also offered to install caution signs along the fence and provide a speed bump to slow people down before the intersection.

Mr. Hammack stated that the applicant's suggestions and relocating the fence back 17.0 feet satisfied his concerns regarding site distance. He stated that the applicant needed to submit a revised plat illustrating the changes.

Ms. Gibb stated that she was not satisfied with the applicant's suggestions and she felt that the fence needed to be moved back farther on the property.

Mr. Hammack moved to approve VC 2002-PR-159 with revised development conditions for the reasons stated in the Resolution contingent on the applicant submitting within 30 days a revised plat illustrating the changes.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BAHRAM SHAHRIARI, VC 2002-PR-159 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 2000 Woodford Rd. on approx. 24,416 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((1)) 43. (Admin moved from 12/17/02)(Def. for decision only from 2/4/03) 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 4, 2003; 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. There is a functional side yard that is treated as a front yard on a narrow right-of-way which is not a State-maintained road.
4. Approval of the variance 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.



~ ~ ~ March 4, 2003, BAHRAM SHAHRIARI, VC 2002-PR-159, continued from Page 264.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Runyon, Dudley, Associates, Inc. dated April 30, 2002, as revised through March 19, 2003 submitted with this application and is not transferable to other land.
2. The three cypress trees adjacent to the fence along Rainbow Road shall be removed to provide an open sight line.
3. A sign shall be located on Rainbow Road approximately 30 feet northwest from the driveway stating "caution hidden entrance ahead".

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. Kelley seconded the motion, which carried by a vote of 4-2. Ms. Gibb and Mr. Ribble voted against the motion. 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 April 23, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      MARY-ELLEN CASE, VC 2002-MV-197 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from side lot line and fence greater than

~ ~ ~ March 4, 2003, MARY-ELLEN CASE, VC 2002-MV-197, continued from Page 265

4.0 ft. in height to remain in front yard. Located at 5933 Clematis Tr. on approx. 20,480 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (3) 12.

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. Mary-Ellen Case, 5933 Clematis Trail, Mason Neck, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, 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 12.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a variance of 8.0 feet was requested. The variance request for a fence greater than 4.0 feet in height to remain in the front yard was not longer required.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the current affidavit did not reflect that Mr. Allen was the applicant's representation.

Ms. Case presented the variance request as outlined in the statement of justification submitted with the application. She reaffirmed her affidavit.

Vice Chairman Ribble called for speakers.

John Allen, (no address given), came forward to speak in support of the application. He explained that the request was to allow for an extension to an existing garage which would allow direct access to and from the home without having to go outside or lift a garage door. He stated the garage would be architecturally compatible with the existing dwelling.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2002-MV-197 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY-ELLEN CASE, VC 2002-MV-197 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. **(VARIANCE FOR FENCE NO LONGER REQUIRED)** Located at 5933 Clematis Tr. on approx. 20,480 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (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 March 4, 2003; 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 house was built in 1935 and is not set square to the lot line and any addition would encroach into minimum yard requirements.
4. The existing house is 13.9 feet from the side lot line and the request would take the addition to 12.0 feet.
5. It is unusual that the house has a 1-car garage attached to the house but it does not connect in a functional way.
6. The addition is relatively minimal and the additional encroachment is minimal.

-- March 4, 2003, MARY-ELLEN CASE, VC 2002-MV-197, continued from Page 266

7. The addition would not negatively affect the neighbors.
8. Although the lot is large, the applicant has to extend the garage where the current garage is located.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Larry N. Scartz, March 16, 2002 and 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. If required by the Virginia Department of Transportation (VDOT) or governmental authority, the storage shed shall be relocated entirely on the subject parcel.

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

~ ~ ~ March 4, 2003, MARY-ELLEN CASE, VC 2002-MV-197, continued from Page 267

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 March 12, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MARK E. & RENEE M. CONBOY, VC 2002-SU-201 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from rear lot line. Located at 11737 English Mill Ct. on approx. 28,582 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((13)) 413.

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. Bill Reames, Patio Enclosures, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a sunroom addition to the rear of the dwelling to be located 18.2 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 6.8 feet was requested.

Mr. Reames, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. The sunroom was not proposed any closer to the property line than the current deck. He said the lot was an unusual shape and had extreme topographical conditions which prevented any other location of the sunroom.

There were no speakers, and Ms. Gibb moved to approve VC 2002-SU-201 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK E. & RENEE M. CONBOY, VC 2002-SU-201 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from rear lot line. Located at 11737 English Mill Ct. on approx. 28,582 sq. ft. of land zoned R-1. Sully District. Tax Map 46-2 ((13)) 413. 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 4, 2003; 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 unusually shaped with steep topography.
4. The house is sited towards the rear of the property.
5. The addition will be in the same location as the existing deck.
6. There will not be any greater impact than currently exists.
7. The addition abuts homeowner association open space which causes no impact on neighbors.

~ ~ ~ March 4, 2003, MARK E. & RENEE M. CONBOY, VC 2002-SU-201, continued from Page 268

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson of Alexandria Surveys International, LLC, dated August 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. 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 March 12, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. DUPONT FABROS DEVELOPMENT, SP 2002-SU-067 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a health club. Located at 14531 Lee Rd. on approx. 28.58 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 34.

Mr. Hart made a disclosure that would not affect his ability to participate in 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. Mark Looney, Cooley, Godward, LLP, 11951 Freedom Drive, Reston, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a health club utilizing a single 35,000 square foot building on the property. The property was approved through site plan for the ultimate construction of six buildings. Three buildings were already constructed and the health club would be the fourth building. The health club would operate between the hours of 5:00 a.m. to 11:00 a.m. daily and would require a maximum of eight employees at any time. The applicant estimates that approximately 200 patrons would visit the health club at any one time during peak hours. As required by the site plan, road improvements were constructed only along areas where Lot 34, the subject property, had frontage along Lee Road. An additional parcel, Lot 34A that was located adjacent to a drainage culvert at the northern end of the site was not improved. Staff was not in support of the application absent improvements to that portion of the roadway because traffic would be greatly impeded where four lanes of traffic were forced down to a two-lane culvert. The applicant had not agreed to construct the frontage improvements. Staff concluded that the subject application was not in harmony with the Comprehensive Plan and not in conformance with the applicable Zoning Ordinance provisions; therefore, staff recommended denial of the application. Chuck Almquist, Department of Transportation, was present to answer questions concerning the road improvements.

Mr. Kelley stated that there was no staff proposed development conditions in the event that the Board approved the application. Ms. Stanfield explained that staff had not prepared any development conditions because the applicant was not willing to make the improvements and staff would not support approval otherwise; therefore, development conditions were not provided.

Mr. Pammel asked if it was staff's position that this particular applicant should be held responsible for the culvert improvements and if so what about the other three buildings that had not been built. Ms. Stanfield clarified that the applicant owned the entire site. Mr. Pammel asked if there was another entrance on Sully Road. Ms. Stanfield replied there was not.

Mr. Hammack asked staff why were the culvert improvements not required in connection with the approval of the site. Ms. Stanfield explained the site plan only depicted Lot 34 and not Lot 34A; therefore, the improvements were not required on Lot 34. Mr. Almquist stated that lot 34A was a small sliver of the parcel and did not front Lee Road

Mr. Hart asked staff why there were no conditions for the culvert improvement originally. Mr. Almquist explained that the office park was an underlying by-right use; therefore, the culvert would have been an offsite frontage improvement.

Mr. Hart asked what the dimensions of Lot 34A were. Mr. Looney presented an exhibit which illustrated those dimensions.

Mr. Hart asked what the Comprehensive Plan planned for Lee Road. Mr. Almquist explained the Comprehensive Plan identified Lee Road as two-lane improved. He stated the volume of traffic on Lee Road indicated the need for a four lane road.

Mr. Hammack stated that in 1984 the site was permitted for a go-kart track and in 1993 the site was allowed for the construction of a miniature golf course. He asked staff if the trip generations were greater than or less than the proposed use. Mr. Almquist said the trip generation for the proposed use would be greater than the past uses.

Mr. Looney presented the special permit request as outlined in the statement of justification submitted with the application. He said the surrounding community was in support of the application without the road improvements. He stated that the Olympus Gym in Sully Plaza had outgrown their space in the current

~ ~ ~ March 4, 2003, DUPONT FABROS DEVELOPMENT, SP 2002-SU-067, continued from Page 270

location and wanted to increase visibility and expand to be able to better serve their members. He contended that the proposed use would not generate the need for improvements on Lee Road. He stated that the gym would have 40 fewer a.m. peak period trips than the by-right office use in the district and it would have 32 additional p.m. peak trips because most people attend the gym in the evening. He said people would be turning into Lee Road rather than out of it to access the site during the p.m. peak hours. He stated that the increasing traffic on Lee Road was coming from uses and activities not associated with the development of the application site. Mr. Looney explained that Lot 34A was created in 1965 but was not included in the 1974 rezoning; therefore, Lot 34A was zoned R1 and could not be included in the application without a rezoning. He stated Lot 34A had an approved site plan which illustrated the locations and dimensions of the proposed building. He said the Comprehensive Plan proposed that Lee Road be a maximum of 2-lanes and the 4-lane recommendation resulted from additional development and volume of traffic on the road.

Vice Chairman Ribble called for speakers.

Scott Mullen, Vice President of Operations, Olympus Gym, (no address given), came forward to speak in support. He stated that the gym would not create a considerable impact of traffic in the area. He said the gym was helping the community by opening the recreational areas to local sports programs.

Jack Libo, Chantilly, Virginia, came forward to speak in support. He said he was a current member of the club and he believed the gym would be a major improvement in the area.

Bjorne and Candy Khatchi (phonetic), Great Oak Lane, Clifton, Virginia, came forward to speak in support. He had been a member of the gym for several years. The gym was operated in an excellent manner and would be a major improvement to the area.

Dale Dorman, 13137 Morning Spring Lane, came forward to speak in support. He stated he was a member of the gym and was in support of the application. He said the gym was a viable part of the community. He said the vehicular traffic for the gym was staggered at different times during the day but the majority of the customers arrived in the evening.

Ann Angriotis, Aerobics Coordinator, Olympus Gym, Fairfax, Virginia, came forward to speak in support. She stated she had worked at the gym for ten years and she was in support of the application.

James Congleton, President, Olympus Gym, Chantilly, Virginia, came forward to speak in support of the application. He stated that he had spent the past year and a half looking for an adequate area to relocate the facility and requested that the Board approve the application.

There was discussion between the Board, staff and the applicant regarding several rezoning applications for the subject property that had been filed for and then withdrawn.

Mr. Hammack asked why was the vehicle trips per hour based on the health club and not on the entire site. Mr. Almquist explained that the County investigated that use only because it was the area of the site that was transferred from the industrial/office use. He stated that any development above the minimal development on the property should be deferred or was not appropriate until the culvert was widened.

Ms. Gibb asked for clarification of the ownership of Lots 34 and 34A. Mr. Looney explained that the previous owner owned both of the parcels and attempted to sell both parcels to the current owner who resisted acquiring Lot 34A because it was not zoned the same but ended up purchasing both of the lots.

Ms. Gibb asked staff for clarification of the location of the culvert with relation to Lot 34A. Mr. Almquist explained the culvert was in VDOT right-of-way adjacent to Lot 34A.

Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve SP 2002-SU-067 with the applicant's proposed development conditions for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DUPONT FABROS DEVELOPMENT, SP 2002-SU-067 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a health club. Located at 14531 Lee Rd. on approx. 28.58 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 34. 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 4, 2003; 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). 5-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only and is not transferable without further action of this Board, and is for the location indicated on the application, 14531 Lee Road (28.58 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 Rinker-Detwiler & Associates, P.C., dated January 2003, 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 hours of operation for the health club shall be limited to 5:00 a.m. to 11:00 p.m., seven days per week.
6. There shall be a maximum of 20 full time and part-time employees associated with this use on the property at any one time.
7. All signs shall comply with the provisions of Article 12, Signs.
8. The maximum height of the proposed building shall be 35 feet.
9. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance and be provided on-site within the business park subject to this application.
10. The proposed building architectural façade shall be consistent with the general style and quality



~ ~ ~ March 4, 2003, DUPONT FABROS DEVELOPMENT, SP 2002-SU-067, continued from Page 272

shown on Sheet 2 of the Special Permit plat.

11. Outdoor lighting fixtures used to illuminate the parking area and walkways shall not exceed twenty-five (25) feet in height, shall be of low intensity design and shall focus directly on the subject property. All other outdoor lighting fixtures shall be full cut-off; focused downward and shielded to minimize glare, and meet the Performance Standards set forth in Article 14 of the Zoning Ordinance.
12. Banners, balloons, and neon signage shall not be permitted at the facility.

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. Hart 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 12, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 4, 2003, (Tape 1), Scheduled case of:

9:00 A.M. UNITARIAN UNIVERSALIST CHURCH IN RESTON, SPA 90-C-026-2 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 90-C-026 previously approved for a church, nursery school and child care center to permit a church with private school of general education, building addition and site modifications. Located at 1625 Wiehle Ave. on approx. 6.14 ac. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((1)) 15. (Admin moved from 1/7/03 and 1/21/03)

Mr. Hart called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert W. Thomas, 9511 Rockport Road, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a building addition, increase in sanctuary seating and site modifications to SP 90-C-026, previously approved for a church, nursery school and child care center. The nursery school and child care center uses had been removed from the special permit as the tenant operating in the church building was a school, not a child care center or nursery school. There was no change proposed to the number of students or hours of operation; the school would continue to have a maximum enrollment of 50 students.

The proposal included a 7,938 square foot building addition to replace the existing sanctuary. The existing sanctuary would then be used as a fellowship hall. The new sanctuary would seat 250 people which were 100 more seats than currently approved.

A portion of the proposed addition and a deck that extended from the addition were located in the Environmental Quality Corridor (EQC). These areas were characterized by steep slopes. Through negotiations with staff, the applicant agreed to preserve other areas of the site with steep slopes to compensate for the encroachment into the EQC with the addition and deck. The subject application was in

~ ~ ~ March 4, 2003, UNITARIAN UNIVERSALIST CHURCH IN RESTON, SPA 90-C-026-2, continued from Page 273

harmony with the comprehensive plan and in conformance with the applicable zoning ordinance provisions. Staff recommended approval of SP 2002-SU-067 but only subject to the proposed development conditions found in Appendix 1 of the staff report dated February 25, 2003.

Mr. Thomas presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the church had been in operation since 1976. He said the main floor of the addition would be the new sanctuary and an entrance foyer and the ground floor would consist of new offices, additional classrooms and meeting rooms. He stated the church would continue to lease space for the Montessori school. He said the current sanctuary limit was 150 and they were operating close to capacity. He said there were 80 to 90 children in the religious education program and it was operating in a very small area. He explained that the church had established a nature trail on the property and they proposed to establish an easement on nearly half of the subject property for the EQC area which would maintain that area as undisturbed open space.

Ms. Gibb asked staff what was the process of ensuring the easement in the EQC area was administered. Ms. Stanfield indicated that the condition would be implemented at site plan review. Ms. Gibb asked staff who the easement was granted to. Ms. Stanfield replied that if the Department of Public Works and Environmental Services (DPWES) chose to accept the easement, then it would be granted to them.

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

Mr. Hammack moved to approve SPA 90-C-026-2 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

UNITARIAN UNIVERSALIST CHURCH IN RESTON, SPA 90-C-026-2 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 90-C-026 previously approved for a church, nursery school and child care center to permit a church with private school of general education, building addition and site modifications. Located at 1625 Wiehle Ave. on approx. 6.14 ac. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((1)) 15. (Admin moved from 1/7/03 and 1/21/03) 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 4, 2003; 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). 6-303 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, 1625 Wiehle Avenue, and is not transferable to other land.

~ ~ ~ March 4, 2003, UNITARIAN UNIVERSALIST CHURCH IN RESTON, SPA 90-C-026-2, continued from Page 274

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Pritham L. Arora, dated June 25, 2002, as revised through January 28, 2003, 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. 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. Upon issuance of the Non-Residential Use Permit (Non-RUP) for SPA 90-C-026-2, the maximum seating capacity for the Church shall be limited to a total of 250 seats.
6. Upon issuance of the Non-Residential Use Permit (Non-RUP) for SPA 90-C-026-2, a maximum total daily enrollment for the private school of general education shall be limited to 50 children.
7. The number of employees for the private school of general education on the property at any one time shall total five (5).
8. The maximum hours of operation for the private school of general education shall be 7:00 a.m. to 6:30 p.m. weekdays.
9. The sign shall be maintained prohibiting any left turn from Wiehle Avenue onto the church site, Monday through Friday.
10. Transitional screening shall be modified to allow the existing vegetation to be used to satisfy this requirement along all lot lines.
11. The barrier requirement shall be waived along all lot lines.
12. Interior parking lot landscaping shall be maintained in accordance with the provisions of Section 13-106 of the Zoning Ordinance.
13. Any proposed lighting shall be provided in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall be low intensity design, full-cut-off fixtures, which focus the light directly onto the subject property and does not create glare or a nuisance off the property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
14. The shared parking agreement executed with the Reston Homeowners' Association shall be renewed when the current agreement expires in 2020, subject to the approval of the Department of Public Works and Environmental Services (DPWES). If the shared parking agreement is not renewed, a special permit amendment shall be required to increase parking on-site or to reduce the number of students and/or sanctuary seating.
15. The limits of clearing and grading shall be no greater than as shown on the special permit plat and

~ ~ ~ March 4, 2003, UNITARIAN UNIVERSALIST CHURCH IN RESTON, SPA 90-C-026-2, continued from Page 275

shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to the construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. Irrespective of the limits shown, the extent of clearing and grading shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.

16. All of the site located within the limits of the EQC shall remain as perpetually undisturbed open space and/or existing utility easements and if any feature is eliminated or reduced in size, the area of that feature shall become part of the perpetually undisturbed open space.

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

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Kelley 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 12, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 4, 2003, (Tape 1), Scheduled case of:

9:30 A.M. CLARA AND NED POFFENBERGER, A 2002-PR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services that the approval of a record plat for a minor lot line adjustment is in compliance with Zoning Ordinance provisions. Located at 8636 Dogwood La. on approx. 1.42 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 29 and 30.

Vice Chairman Ribble stated that the notices were not in order. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the notices were not in order because the applicants prepared and mailed the notices, but failed to submit proof to the County. She said a deferral date had not yet been scheduled with DPWES.

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~ ~ ~ March 4, 2003, (Tape 1), After Agenda Item:

Status update and deferral request for Vincent A. Tramonte II,  
Louise Ann Caruthers, Robert C. Tramonte and Silvio Diana, A 2002-LE-031

Mr. Hart made a disclosure that would not affect his ability to participate in the hearing.

Jayne Collins, Zoning Administration Division, explained that the two appeals were interrelated because they

~ ~ ~ March 4, 2003, AFTER AGENDA ITEMS, continued from Page 276

were abutting properties which were located on Cinderbed Road and were a part of the focus of the Cinderbed Road Task Force. Appeal A 2002-LE-031 involved contractors offices and shops, storage yards, motor vehicle impoundment yards established on Lots 1 and 2 without site plan, building permit or Non-RUP approvals. A 2003-LE-001 involved a concrete mixing and batching plant on Lots 3A and 3B that had been expanded without special exception approval. It had encroached into the flood plain and the R-1 zoned portion of the property. The flood plain had been cleared and graded and a stream crossing was constructed in the flood plain without a grading plan. Vehicles, construction equipment, product structures and waste associated with a concrete plant as well as liquid petroleum on an area in excess of 2,500 square feet were stored in the flood plain. In order to legitimize these uses on the properties, the R-1 portion would have to be rezoned to the I-5 or I-6 District which permitted the uses established on the properties or those uses would have to be removed from the R-1 portion of the property and the flood plain. Special Exception approvals were needed for the expanded concrete mixing and batching plant and the uses within the flood plain including the stream crossing. Appeal A 2003-LE-031 had already been deferred twice and the special exception and approval processes were lengthy. Staff could not agree to a further deferral due to the nature of the violations on the property and their location on Cinderbed Road. The appellants were aware of the need for special exception, site plan, building permit and Non-RUP approvals since the notice was issued in August. Although the appellants had initiated the process to clear the violations, the progress was slow. Consistent with the position taken with other cases along Cinderbed Road it was staff's opinion that the best course of action was a timely disposition of the appeals by upholding the Zoning Administrator's position, and resolution obtained through the litigation process and a consent decree. Ms. Collins asked that the appeals go forward as scheduled on April 15, 2003.

Mr. Hammack asked how long staff had known about the violations before the appeal was filed in August. Ms. Collins stated the Cinderbed Road Task Force had been in operation for two years working on violations along various properties along the road.

Jerry Emerick, agent for the appellant, explained that the appellants had been working diligently with staff and explained that the flood plain and RPA area needed to be located on the property and the snow had delayed the process. He stated that the appellants intended to file special exception applications as soon as possible. He requested a continuance until July of 2003.

Lynne Strobel, agent for appellant, explained that the property owners fully intended to file special exception applications but there was research and investigation that had to be done in anticipation for filing those applications.

Mr. Hammack asked Ms. Strobel for an anticipated date when special exception applications would be filed. Ms. Strobel replied the first week of April, 2003.

Mr. Pammel moved to defer A 2002-LE-031 to October 14, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Kelley was not present for the vote, and Chairman DiGiulian was absent from the meeting.

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~ ~ ~ March 4, 2003, (Tape 1), After Agenda Item:

Approval of Revised Plat  
Submitted by Nasr and Shaista Chaudry,  
VC 2002-HM-155

There was discussion between the Board and staff whether or not the submitted plats complied with the Board's request and if they could be approved. The outcome was that the applicants either had to submit a revised plat reflecting the Board's request or they needed to begin the application process again.

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~ ~ ~ March 4, 2003, (Tape 1), After Agenda Item:

Approval of February 25, 2003 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Kelley was not present for the vote, and 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 11:53 a.m.

Minutes by: Lori M. Mallam

Approved on: September 21, 2004

Regina Thorn Corbett

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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, March 11, 2003. The following Board Members were present: John DiGiulian; Robert Kelley; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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.

~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & MARION HILDBOLD, SP 2002-BR-065 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 2.3 ft. from side lot line and 3.8 ft. from rear lot line, addition 35.7 ft. from front lot line and fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 9120 Kahle St. on approx. 22,751 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((4)) 16. (admin moved from 2/18/03 due to inclement weather)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marion Hildbold, 9120 Kahle Street, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a special permit to permit reduction to minimum yard requirements based on an error in building location to permit a detached garage to remain 2.3 feet from a side lot line and 3.8 feet from the rear lot line and an enclosed carport to remain 35.7 feet from a front lot line and a 5.5-foot fence to remain in the front yard. The minimum required side and rear yards for a corner lot in an R-1 Zoning District are 20 feet; therefore, modifications of 17.7 feet and 16.2 feet were requested for the garage. The minimum required front yard is 40 feet; therefore, a modification of 4.3 feet was requested for the carport. A fence with a maximum height of 4.0 feet is permitted in the front yard of a corner lot; therefore, a modification of 1.5 feet was requested.

Ms. Hildbold presented the special permit request as outlined in the statement of justification submitted with the application. She explained that a contractor was hired to build the garage, and they assumed that he had gotten a permit, but he had not. She stated that the development to the rear of the lot was not there at the time the garage was built and was approximately 20 to 25 years old. Ms. Hildbold stated that they had not received any complaints about the structure and that it would be a great hardship to remove the garage. She explained that they had put lattice work around the carport for privacy reasons and that they were not aware a permit would be needed for that. She stated that the fence belonged to a new neighbor and was put up by the previous owners. Ms. Hildbold stated that she has no problem with the fence.

Mr. Hart asked if the upstairs of the garage was a finished room. Ms. Hildbold stated that it was used for storage.

Mr. Hart asked if there was plumbing or electricity in the garage. Ms. Hildbold stated that there was plumbing, electricity, a powder room, and a furnace.

Mr. Hart asked if the powder room was in the upstairs or downstairs of the garage. Ms. Hildbold stated that it was in the downstairs.

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

Mr. Pammel explained that he had concerns with the garage because with very few modifications, it could be a living space. He stated that he had no problem with the fence. He stated that if the application was for a variance, he would not be able to support it; therefore, he made a motion to approve SP 2002-BR-065 in part; approving the addition and the fence, but denying the accessory structure (garage).

The motion failed for lack of a second.

Mr. Hart moved to approve SP 2002-BR-065 for the reasons stated in the Resolution. He commented that the substantial brick structure had been in existence for 20 or more years. He noted that there were large

trees which precluded the relocation of the garage to a location to the left and said that with the fencing around it and the large trees to the side of it, it did not appear prominent. He stated that the applicants had testified that they had assumed the contractor would obtain the necessary building permits, but that unaware to the applicants, the contractor had failed to do so. Mr. Hart said that to require the applicants to tear down the garage that had been in existence for many years would be the kind of hardship and expense contemplated in the section that allowed a special permit for a mistake in building location. He stated that although the garage was too close to the property line, the applicants had shown they met the applicable standards.

Mr. Kelley seconded the motion.

Mr. Pammel stated that he would not support the motion. He proposed an amendment to the development conditions that the applicable building permits be obtained and inspections be done for the garage structure.

Mr. Hart accepted Mr. Pammel's amendment.

Mr. Kelley did not accept Mr. Pammel's amendment. He stated that the structure had been there for 20 years and was in good shape, and if it was going to be made into an additional dwelling unit, it would have already been done.

The proposed amendment to the motion failed for lack of a second.

Chairman DiGiulian called for the vote on Mr. Hart's motion to approve SP 2002-BR-065, which carried by a vote of 5-1-1. Mr. Pammel voted against the motion, and Mr. Hammack abstained from the vote.

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## COUNTY OF FAIRFAX, VIRGINIA

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

WILLIAM & MARION HILDBOLD, SP 2002-BR-065 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 2.3 ft. from side lot line and 3.8 ft. from rear lot line, addition 35.7 ft. from front lot line and fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 9120 Kahle St. on approx. 22,751 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((4)) 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 March 11, 2003; 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;



~ ~ ~ March 11, 2003, WILLIAM & MARION HILDBOLD, SP 2002-BR-065, continued from Page 280

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

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

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

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

- 1. This special permit is approved for the location of a detached garage, an enclosed carport, and a 5.5 foot high fence as shown on the plat prepared by John C. Manganello, dated September 27, 2002, as revised through November 14, 2002, submitted with this application and is not transferable to other land.

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

Mr. Kelley 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 March 19, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN KAMPSCHROER, VC 2002-MA-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 32.0 ft., eave 30.1 ft. and stairs 28.1 ft. from front lot line. Located at 6404 Waterway Dr. on approx. 11,563 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 474. (admin moved from 2/18/03 due to inclement weather)

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 Kampschroer, 6404 Waterway Drive, Falls Church, Virginia, replied that it was.

Francis Burnszynski, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition 32 feet with eaves 30.1 feet and stairs 28.1 feet from the front lot line. The minimum front yard requirement for the addition in the R-2 district is 35 feet; the minimum front yard requirement for the eaves is 32 feet; and the minimum front yard requirement for stairs is 30.0 feet; therefore, a variance of 3.0 feet was requested for the addition and a variance of 1.9 feet was requested for the eaves and the stairs.

Mr. Kampschroer presented the variance request as outlined in the statement of justification submitted with

the application. He explained that he wanted to expand to make room for a modern kitchen. He stated that most of their entertaining for the neighbors occurred in the front yard so they wanted to put the dining and entertaining areas in the front. Mr. Kampschroer stated that there was no possibility of expanding towards the rear because the natural light that came into the lower levels would be obscured. He stated that he had an entrance for the disabled in the rear that they needed to preserve because his wife's mother was aging and he had a disabled brother who might move in. He explained that they had carefully considered the trees and made sure the White Oaks in the front yard would be preserved. Mr. Kampschroer stated that he had hired an arborist to map out the roots of the trees, and the foundation of the house had been adjusted so it did not disturb any of the root systems. He stated that the addition would be in harmony with the rest of the neighborhood. He explained that the Architectural Review Board for Lake Barcroft had reviewed and approved the plans for the addition. He stated that it was a small variance of 3.0 feet and the steps existed within the line of where the steps were currently. Mr. Kampschroer stated that they had reduced the overhang of the roof line to make sure that the massing was as small as possible.

Jim Burton, the applicant's architect, came forward to speak about the proposed construction. He explained that he felt the design was appropriate for the neighborhood. He stated that the neighborhood had a lot of diversity because it was around a lake. Mr. Burton stated that there were a lot of low houses with shed roofs so you could see the lake from the road. He stated that the applicant's home was on the other side of the street with other two-story homes so they could see the lake as well. He stated that they were adding onto a one-story house. Mr. Burton stated that they were not going out to the trees on the left, and the addition would be under the canopy. He stated that they went to great lengths not to disturb the roots of the White Oaks. He stated that there was no house directly in front of the applicant's.

Mr. Kelley asked if the applicant had seen the letters of opposition from his neighbors. Mr. Kampschroer stated that he had seen one letter. He stated that he had talked to all the adjacent neighbors and that originally all of the neighbors seemed in support of the addition.

Mr. Hart asked if the left corner of the steps could be brought back 1.9 feet so a variance for the steps would not be needed. The applicant stated that the steps could be adjusted the 1.9 feet to gain approval of the variance.

Mr. Hart asked if the addition was a one-level continuation of the house. The applicant stated that was correct.

Mr. Hart asked if the front wall of the addition was 3.0 feet too close to the street. The applicant stated that it was.

Mr. Hart asked if the roof slanted towards the house. The applicant stated that it did.

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

Mr. Hammack moved to approve VC 2002-MA-196 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN KAMPSCHROER, VC 2002-MA-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 32.0 ft., eave 30.1 ft. and stairs 28.1 ft. from front lot line. Located at 6404 Waterway Dr. on approx. 11,563 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 474. (admin moved from 2/18/03 due to inclement weather. 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

~ ~ ~ March 11, 2003, KEVIN KAMPSCHROER, VC 2002-MA-196, continued from Page 282

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 11, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance.
3. Because of the topographical characteristics of the property, the proposed location is the most logical place for the addition.
4. 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 an addition, eave and steps, shown on the plat prepared by the Bryant L. Robinson, Land Surveyor, dated November 21, 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 Section 18-405 of the Zoning Ordinance, this variance shall automatically expire, without notice,

~ ~ ~ March 11, 2003, KEVIN KAMPSCHROER, VC 2002-MA-196, continued from Page 283

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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 19, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. CARLOS E. MARTINEZ, TRUSTEE, VC 2003-MV-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 30.0 ft. from front lot line and 8.0 ft. and 14.8 ft. from side lot line. Located at 7519 Cornith Dr. on approx. 15,500 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((19)) 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. Carlos Martinez, 7519 Cornith Drive, Alexandria, Virginia, replied that it was.

Francis Burnszynski, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of additions to be used for living space. The additions would be 30 feet from the front line and 8.0 feet and 14.8 feet from the side lot lines. The minimum front yard requirement for an addition in the R-2 District is 35 feet; therefore, a variance of 5.0 feet was requested. The minimum side yard requirement is 15 feet; therefore, variances of 7.0 feet and 0.2 feet were requested.

Mr. Martinez presented the variance request as outlined in the statement of justification submitted with the application. He explained that he would like to provide a living space for his father-in-law on one floor. He stated that he would like to convert his existing garage into a bedroom and bathroom and build a new two-car garage in front of the existing structure. Mr. Martinez stated that the area in between his and his neighbor's house was open grass with several trees, and his neighbor only mowed 10 feet inside of her property line, leaving them to do the mowing and maintenance of 10 feet into her property. He stated that from the corner of their house to the nearest corner of the neighbor's house was 45 to 47 feet.

Mr. Pammel asked the applicant why the width of the garage was so large. The applicant stated that they would change the width to 22 feet for the garage from 24 feet.

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

Mr. Pammel moved to approve in part VC 2003-MV-004 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARLOS E. MARTINEZ, TRUSTEE, VC 2003-MV-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 30.0 ft. from front lot line and 8.0 ft. **(The BZA approved the garage 10.5 feet.)** and 14.8 ft. from side lot line. Located at 7519 Cornith Dr. on approx. 15,500 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((19)) 10. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ March 11, 2003, CARLOS E. MARTINEZ, TRUSTEE, VC 2003-MV-004, continued from Page 284

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 2003; and

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

1. The applicant is the owner of the land.
2. The house is currently 14.8 feet from the side lot line and the addition to the rear is continuing the same building 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** in part with the following limitations:

1. This variance is approved for the location of the additions, shown on the plat prepared by the Bryant L. Robinson, Land Surveyor, dated November 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 additions shall be architecturally compatible with the existing dwelling.

~ ~ ~ March 11, 2003, CARLOS E. MARTINEZ, TRUSTEE, VC 2003-MV-004, continued from Page 285

4. The garage addition of the north side of the house shall have a minimum side yard of 10.5 feet.

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. 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 March 19, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH P. FERGUSON, JR., VC 2002-LE-202 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.4 ft. from side lot line. Located at 5504 Dunsmore Rd. on approx. 10,921 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 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. Joseph P. Ferguson, Jr., 5504 Dunsmore Road, Alexandria, Virginia, replied that it was.

Lindsey Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition 8.4 feet from the side lot line. The Zoning Ordinance requires a minimum yard of 12 feet; therefore, a variance of 3.6 feet was requested.

Mr. Ferguson presented the variance request as outlined in the statement of justification submitted with the application. He explained that they would like to enclose their existing carport. He stated that there would be no change to the footprint of the house. He stated that they were replacing the siding on the house and would also like to be able to side the garage, increasing the property value of the home. He explained that they were one of the few in the neighborhood without a garage, and they wanted to be consistent with the rest of the neighborhood. He stated that their intention was not to create additional living space. Mr. Ferguson stated that there would be greater than 24 feet distance between the garage and his neighbor's home.

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

Mr. Ribble moved to approve VC 2002-LE-202 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH P. FERGUSON, JR., VC 2002-LE-202 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.4 ft. from side lot line. Located at 5504 Dunsmore Rd. on approx. 10,921 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 19. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ March 11, 2003, JOSEPH P. FERGUSON, JR., VC 2002-LE-202, continued from Page 286

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 11, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance.
3. The placement of the house on the property causes the need for the variance.
4. The addition will not be any closer to the lot line than the existing carport.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Grove Landsurveying, dated November 21, 2002, as revised through December 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

~ ~ ~ March 11, 2003, JOSEPH P. FERGUSON, JR., VC 2002-LE-202, continued from Page 287

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 March 19, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      DAVID S. TROEGER, VC 2002-LE-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 3412 Sharon Chapel Rd. on approx. 15,332 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((8)) 12. (admin moved from 2/18/03 due to inclement weather)

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 Troeger, 3412 Sharon Chapel Road, Alexandria, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the request as contained in the staff report. The applicant requested a variance to permit construction of an addition 10 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance of 5.0 feet was requested.

Mr. Troeger presented the variance request as outlined in the statement of justification submitted with the application. He explained that he wanted to place the garage on the right side of the house so that in the future they could add other additions to the house. He stated that the right side yard was the only other place they had for an addition. He explained that since the lot was odd in shape, they would need to put it on the right side of the house.

Mr. Hart asked if the applicant would have two driveways. The applicant stated that they were going to remove the existing driveway and install another for the new garage.

Mr. Hart asked if the garage would be done before they removed the existing driveway. The applicant stated that they wanted to have the garage done by the end of the year so they could start the rest of the construction.

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

Ms. Gibb moved to approve VC 2002-LE-192 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID S. TROEGER, VC 2002-LE-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 3412 Sharon Chapel Rd. on approx. 15,332 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((8)) 12. (admin moved from 2/18/03 due to inclement weather) 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



~ ~ ~ March 11, 2003, DAVID S. TROEGER, VC 2002-LE-192, continued from Page 288

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 11, 2003; and

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

1. The applicant is the owner of the land.
2. The shape of the lot dictates the need for the variance.
3. The proposed garage only encroaches into the restricted area at the right rear portion of the lot.
4. Most of the garage that extends north stays within the 15.0 foot side yard requirement.
5. The variance would have little impact on the adjoining 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 addition shown on the plat prepared by Alexandria Surveys International, LLC dated October 18, 2001, as revised through November 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 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,

--- March 11, 2003, DAVID S. TROEGER, VC 2002-LE-192, continued from Page 289

thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 19, 2003. This date shall be deemed to be the final approval date of this variance.

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--- March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN & SUSAN STOVER, VC 2002-DR-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 12325 Streamvale Ci. on approx. 8,447 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((8)) 27. (admin moved from 2/18/03 due to inclement weather)

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 Stover, 12325 Streamvale Circle, Herndon, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the request as contained in the staff report. The applicant requested a variance to permit construction of an addition 18 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 7.0 feet was requested.

Mr. Stover presented the variance request as outlined in the statement of justification submitted with the application. He explained that the addition would increase the livability of the house. He said that the house to the rear of the lot was 15 feet higher than theirs. He explained that the sunroom would give them privacy. He said that the neighbor to the left had a similar screened porch and that the addition would be in character with the neighborhood. He stated that the addition would increase the property value of the home.

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

Mr. Kelley moved to approve VC 2002-DR-193 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

JOHN & SUSAN STOVER, VC 2002-DR-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line. Located at 12325 Streamvale Ci. on approx. 8,447 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((8)) 27. (admin moved from 2/18/03 due to inclement weather) Mr. Kelly moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 11, 2003; and

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

- 1. The applicants are the owners of the land.
- 2. The applicant has met the required standards for a variance.
- 3. The proposed structure requiring a variance would be 18.0 feet from the lot line at one point. It requires an increasingly less variance at all other points due to the lot shape.
- 4. The lot is exceptional in 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 shown on the plat prepared by Greenhorne & O'Mara, Inc., dated July 17, 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.

~ ~ ~ March 11, 2003, JOHN & SUSAN STOVER, VC 2002-DR-193, continued from Page 291

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 19, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. HEATHER L. CARROLL, SP 2002-SP-066 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 5855 Kara Pl. on approx. 3,350 sq. ft. of land zoned R-8 (Cluster). Springfield District. Tax Map 78-4 ((7)) 14. (Moved from 2/25 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. Heather Carroll, 5855 Kara Place, Burke, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a special permit to allow five dogs, four Boston Terriers and one Lab mix. The Zoning Ordinance requires a minimum lot size of 20,000 square feet for the keeping for five or six dogs, and the applicant's property contained 3,350 square feet. Ms. Stanfield said the dogs were not left outside by themselves, and they were leash walked several times a day. She said the applicant indicated that she cleaned up after the dogs after they were walked. Ms. Stanfield said the rear yard was not enclosed.

Mr. Kelley asked staff if the special permit request was a result of a complaint. Ms. Stanfield replied that it was.

Mr. Kelley asked staff of the nature of the complaint. Ms. Stanfield stated that it was not a complaint of a neighbor.

Mr. Kelley asked staff who had made the complaint about the dogs. Ms. Stanfield stated that she believed the complaint was made by animal control.

Mr. Kelley asked staff if animal control looked for violations. Ms. Stanfield stated that she could not answer the question.

Mr. Hammack asked staff if animal control was present to testify. Ms. Stanfield stated that they were not. She stated that the complainant had not been in contact with her.

Ms. Carroll presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Carroll explained that the dogs had lived with her over 16 years and she was not aware that there was a restriction on the number of dogs you could have in your home. She said some of the dogs were rescued dogs and were blind and deaf. She stated that two of the dogs she had rescued from being put to sleep. She stated that animal control had been to her house only once when it was tear gassed and that animal control had come to take the animals out of the house to make sure that they were all right.

Chairman DiGiulian asked the applicant why the home was tear gassed. Ms. Carroll stated that she would decline to answer the question, but stated that it had to do with one of her children.

Mr. Hammack asked staff if animal control was not present because of the Freedom of Information Act. Ms. Stanfield stated that she could not speculate why animal control was not present.

Ms. Gibb asked the applicant if the complaint was made after animal control came to her house. The applicant stated that it was. She explained that all of her animals were licensed and registered with the County and up to date on all of their vaccines.

Chairman DiGiulian asked the applicant if she had had all of the dogs in the house for 16 years. Ms. Carroll

~ ~ ~ March 11, 2003, HEATHER L. CARROLL, SP 2002-SP-066, continued from Page 292

replied that she had collected the dogs over 16 years.

Mr. Hammack asked staff if the zoning violation was based strictly on the animal control report and if the zoning inspector had been out to the property to verify. Ms. Stanfield stated that a zoning inspector had been out to verify.

Mr. Hammack asked staff if the zoning inspector was present at the meeting. Ms. Stanfield stated that he was not. She explained that she had also made a site inspection at the property.

Mr. Hammack asked the applicant if she had read the proposed development conditions. She replied that she had and she could live with them.

Mr. Kelley asked the applicant if she was a dog breeder. Ms. Carroll stated that she was not and that they were all neutered and spayed.

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

Mr. Hammack moved to approve SP 2002-SP-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**

HEATHER L. CARROLL, SP 2002-SP-066 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 5855 Kara Pl. on approx. 3,350 sq. ft. of land zoned R-8 (Cluster). Springfield District. Tax Map 78-4 ((7)) 14. (Moved from 2/25 for notices) 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 11, 2003; 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). 8-917 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, 5855 Kara Place (3,350 square feet), shown on the plat prepared by Heather Carroll, dated November 17, 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 five dogs. If any of these specific animals die or are sold or given away, the third, fourth and fifth dogs shall not be replaced.

~ ~ ~ March 11, 2003, HEATHER L. CARROLL, SP 2002-SP-066, continued from Page 293

4. Animal debris associated with the five dogs shall be collected daily and such debris shall be disposed of in a method approved by the Health Department.

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 19, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER J. BANE & PATRICIA A. QUARTI, VC 2002-HM-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from front lot line of a corner lot. Located at 2250 Loch Lomond Dr. on approx. 17,694 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((20)) 25. (admin moved from 2/18/03 due to inclement weather)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patricia Quarti, 2250 Loch Lomond Drive, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 21 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 25 feet; therefore, a variance of 4.0 feet was requested.

Ms. Quarti presented the variance request as outlined in the statement of justification submitted with the application. She stated that the garage was 20 feet by 25 feet. She said that the house was built on a hilly lot and sat at an angle on the property. She explained that the left front corner of the garage would be 21 feet from the property line rather than 25 feet. She stated that if the garage was moved back, they would infringe on the 8-foot requirement for the side property line. She stated that the garage would house two cars and be used for storage. Ms. Quarti said the home did not have a basement, and their storage was limited.

Mr. Hart asked the applicant if the chimney on the house would still allow the garage to accommodate two cars. Ms. Quarti stated that it would.

Mr. Hart asked the applicant if an engineer or an architect had been involved in planning the garage. Ms. Quarti stated that both an engineer and an architect had designed the garage.

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

Mr. Pammel moved to approve VC 2002-HM-191 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER J. BANE & PATRICIA A. QUARTI, VC 2002-HM-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from front lot line of a corner lot. Located at 2250 Loch Lomond Dr. on approx. 17,694 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((20)) 25. (admin moved from 2/18/03 due to inclement weather) Mr. Pammel moved that the Board of

~ ~ ~ March 11, 2003, CHRISTOPHER J. BANE & PATRICIA A. QUARTI, VC 2002-HM-191, continued from Page 294

Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 2003; and

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

1. The applicants are the owners of the land.
2. The application complies with the required criteria for granting a variance.
3. The topography of the wooded lot causes the need for a variance.
4. The application proposal will not disturb any of the existing vegetation on the site.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Lawrence Boehly, dated November 22, 2002, as revised through December 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

~ ~ ~ March 11, 2003, CHRISTOPHER J. BANE & PATRICIA A. QUARTI, VC 2002-HM-191, continued from Page 295

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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 19, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 11, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      TONY L. & DEBORAH A. CULLY, VC 2002-LE-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft., chimney 7.6 ft. and roofed deck 6.2 ft. from side lot line. Located at 6432 Rives Ct. on approx. 14,477 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13)) (P) 530. (Moved from 2/4/03). (admin moved from 2/18/03 due to inclement weather)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tony Cully, 6432 Rives Court, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition 8.1 feet, a chimney 7.6 feet, and a roofed deck 6.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet for the addition and roof deck and a minimum side yard of 9.0 feet for the chimney; therefore, variances of 3.9 feet, 5.8 feet, and 1.4 feet were requested.

Mr. Cully presented the variance request as outlined in the statement of justification submitted with the application. He stated that their lot was at the end of a cul-de-sac and was very odd in shape. He said there was a large hill in the back yard so they were limited with the placement of the addition. Mr. Cully stated that the back of the addition was within the side lot lines. He explained that they were building a family room on the left side of the house which would be in proportion to the garage on the right side of the house. He stated that there would not be any change in water runoff. Mr. Cully said the addition would have perimeter foundation drainage which would allow the water to be fed underground and would improve the current drainage problem.

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

Mr. Ribble moved to approve VC 2002-LE-182 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TONY L. & DEBORAH A. CULLY, VC 2002-LE-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft., chimney 7.6 ft. and roofed deck 6.2 ft. from side lot line. Located at



~ ~ ~ March 11, 2003, TONY L. & DEBORAH A. CULLY, VC 2002-LE-182, continued from Page 296

6432 Rives Ct. on approx. 14,477 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13)) (P) 530. (Moved from 2/4/03). (admin moved from 2/18/03 due to inclement weather) Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 11, 2003; and

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

1. The applicants are the owners of the land.
2. The applicant has met the required standards for a variance.
3. The shape and topography of the lot causes the need for a variance 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, roofed porch and chimney shown on the plat prepared by George W. O'Quinn, dated August 28, 2002, as revised through November 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 and porch shall be architecturally compatible with the existing dwelling.

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

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 March 19, 2003. This date shall be deemed to be the final approval date of this variance.

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Chairman DiGiulian asked William Shoup, Deputy Zoning Administrator, if there would be a presentation made to the BZA. Mr. Shoup responded affirmatively and stated that there had been a number of questions about the Subdivision Ordinance and the proposed Subdivision Ordinance Amendment. He said John Friedman, Department of Public Works and Environmental Services (DPWES), who was responsible for the preparation of the Subdivision Ordinance Amendment, would be giving a brief overview of the proposed amendment, and Patrick Taves and John Foster, County Attorney's Office, would be answering questions and providing input.

Mr. Friedman explained that the Board of Supervisors (BOS) had asked staff to prepare amendments to add validation procedures into the Subdivision Ordinance for lots that were illegally created. He stated that they had prepared four different provisions for consideration by the BOS which were going to public hearing before the Planning Commission (PC) on March 20, 2003, and the BOS on March 24, 2003. He explained that the first provision, Section 101-1-12, would provide that all lots created prior to September 1, 1947, by a metes and bounds description or an unapproved plat would be automatically validated as legal lots. Mr. Friedman stated that this applied to residential and commercial lots and developed and undeveloped lots. He stated that the second provision would affect lots created through approval of a subdivision plat. He explained that in the past illegal lots had been incorporated into approved subdivisions as part of the parent tract. Mr. Friedman said the provision would automatically validate the lots that went through a legal subdivision provision regardless of whether or not one of the parent lots was legally created. He stated that the final two provisions were for undeveloped lots and developed lots, for lots created after September 1, 1947, by metes and bounds description or unapproved plats. Mr. Friedman said commercial and residential lots would require approval of a validation plat and would show that they had met the Zoning Ordinance requirements. He said it would require public street frontage, or have frontage waived by the BOS, and the dedication of any easements and right-of-ways deemed necessary to comply with the minimum Subdivision Ordinance provisions and the construction and bonding of drainage improvements if necessary. Mr. Friedman explained that the final provision was developed specifically to apply to residential lots that had existing homes on them. He said it applied to lots created on or after September 1, 1947, by metes and bounds descriptions or unapproved plats. He stated that it would require approval of a validation plat and compliance with the Zoning Ordinance that was in effect or the current Zoning Ordinance, but would not require public street frontage or the construction and bonding of drainage improvements. Mr. Friedman stated that if necessary it would require dedications of easements and right-of-ways to comply with minimum Subdivision Ordinance provisions.

Chairman DiGiulian asked Mr. Friedman if the lots that were developed with existing residences on them would require a validation plat. Mr. Friedman stated that if the lots were created after September 1, 1947, they would.

Chairman DiGiulian asked Mr. Friedman what would happen if the lot could not be validated. Mr. Friedman stated that they were asked by the BOS to create validation procedures for lots that could have complied with the Subdivision and Zoning Ordinance provisions in effect at the time the lots were created. He stated

~ ~ ~ March 11, 2003, continued from Page 298

that if they did not meet the requirements, they would not be validated and would remain illegal lots.

Chairman DiGiulian asked what an illegal lot meant if someone had already built on the lot and was residing in the home. Mr. Taves stated that he did not think that the Zoning Administrator had taken action to challenge the existence of the homes. He said that it would come into play if an individual wanted to obtain a building permit.

Chairman DiGiulian asked Mr. Taves what would happen if the lot owners would refinance their home. Mr. Taves said if the lot had been declared illegal, it had always been illegal. He said that when the lot was purportedly created, the Subdivision Ordinance requirements were not satisfied.

Chairman DiGiulian asked if that would be the case even though the County issued a building permit. Mr. Taves stated that the County might have incorrectly issued a building permit, but that did not change the fact that the lot was illegally created.

Mr. Hart asked Mr. Taves to comment on a situation where a letter went out to the homeowners saying their property was blighted and required fixing it up or tearing it down, the owners demolished the home and came to the County for a building permit. Mr. Hart stated that he thought the example was initiated by the Zoning Administrator's office, and the owner was told by the County when attempting to obtain the building permit that they had an "illegal" lot and could not receive a permit to rebuild.

Mr. Taves explained that there was no validation procedure for illegal lot owners. He said the BOS had the amendment created so that lots could be validated.

Ms. Gibb stated that the situation had become greater in the last couple of years and had been based on a mistaken premise that the lots were illegal that were created before 1947 by metes and bounds descriptions or unapproved plats. She stated that, in her opinion, the lots were not illegal and lots were routinely created that way and there were very few lawyers practicing in the County at that time. She stated that the 1927 Ordinance only required a plat that was approved by a County engineer when there was a dedication of a road. She said the whole Ordinance was geared toward streets and not duplicating the names of the streets, how wide they were supposed to be, and how they were supposed to connect. She explained that once a property fronted on a street, it could be divided by metes and bounds descriptions and a plat. She stated that land records reflected that many lots were created this way and it was the routine.

Mr. Taves replied that with regard to the pre-1947 lots, the validation procedures that the BOS would be considering would automatically validate the lots if they met the Zoning Ordinance requirements at the time and the stipulated requirements previously mentioned by Mr. Friedman.

Ms. Gibb stated that if the lots were impugned as illegal now, all of the lots that came from them after 1947 would be impugned. She asked Mr. Taves how many real estate lawyers and title examiners were on the committee that looked over the matter. Mr. Taves stated that Ms. Gibb had a different opinion than DPWES. He stated that this was a determination made by DPWES under the Subdivision Ordinance. Ms. Gibb explained that she was giving her opinion as a lawyer and as a title examiner, not as a BZA member.

Mr. Taves stated that there were many of these types of lots that were said to be illegal. He stated that staff was not sure how many existed.

Ms. Gibb stated that the lots were not illegal. She stated that in Great Falls and McLean there were numerous of these types of lots. She stated that the validation process was costly to the citizens.

Mr. Taves stated that they were trying to help the citizens by allowing them to validate their illegal lots.

Ms. Gibb asked Mr. Taves who created the validation process and what their background was in real estate and law. Mr. Taves replied that DPWES was responsible for the Ordinance amendment that was under consideration by the PC and the BOS. He stated that the County Attorney's Office assisted DPWES in preparing the amendment.

Ms. Gibb asked Mr. Taves if County Attorneys with experience in this area had given them input. Mr. Taves stated that they had looked at the Ordinance that was in effect at the time of the creation of the illegal lots,

~ ~ ~ March 11, 2003, continued from Page 299

and the Ordinance required plats to be approved by the County.

Ms. Gibb asked Mr. Taves if he thought the lots were intentionally created illegally. Mr. Taves replied that he did not know.

Ms. Gibb asked Mr. Taves if he had curiosity regarding what went on at the time the lots were created and why it happened. She stated that there was no reason to create illegal lots.

Mr. Taves explained that the conclusions that DPWES had drawn with regard to the illegal lots were not based upon a conclusion that anyone had bad intent. He stated that the Ordinance amendment that Ms. Gibb did not think was necessary was initiated partially because the Northern Virginia Building Industry Association (NVBIA) asked for the amendment. He stated that they had been working with NVBIA to formulate the validation provisions.

Ms. Gibb stated that she wanted people with these lots to have a lot that they could sell without having to hire an engineer and a lawyer and spend their time trying to get a lot validated that was not invalidated.

Mr. Taves stated that the lots in question were currently viewed by DPWES as illegal and permits could not be issued for them. He stated that the provisions were designed to help the lot owners.

Ms. Gibb stated that the biggest investment that people made was their house, and there was one person in an engineer's office telling the lot owners that their lot was illegal. She stated that the procedure was complicated.

Mr. Taves stated that there was no evaluation of a deed done by DPWES. He stated that the issue was whether or not the Ordinance requirements were satisfied. He stated that the Ordinance referenced whether or not there was a plat that had been approved by the County.

Ms. Gibb explained that the Ordinance did not state that. She stated that it said a description or a plat.

Mr. Hart stated that he agreed with Ms. Gibb. He explained that his perspective was that building permits for lots that had been routinely granted were suddenly unable to be obtained. He stated that the BZA began getting appeals for such lots. Mr. Hart stated that he thought someone was making an inaccurate reading of the 1927 Subdivision Ordinance. He stated that the BZA had concluded that the Ordinance did not require a plat unless a street or public alley was being dedicated.

Mr. Taves asked Mr. Hart if when he spoke of the 1927-1928 Ordinance, he was referring to the 1927-1928 Subdivision Ordinance. Mr. Hart replied that he was.

Mr. Taves stated that he was not aware that there was a Zoning Ordinance that far back. Mr. Hart replied that the BZA had been given the Subdivision Ordinance as an attachment to many appeals.

Mr. Hart stated that he did not see where the validation process was helping people in light of the costs involved. He explained that the lot owners would have to hire an engineer and a lawyer and that the County was highly underestimating the cost of the process. He said building permits had been issued, people lived in the houses and paid taxes and now had to go through an expensive and time-consuming validation procedure, and he did not see the rationale for drawing a line in 1947.

In reference to Mr. Hart's comment regarding the County's determination of lots being illegal under these circumstances as being a recent occurrence, Mr. Taves explained that they had been dealing with illegal lot situations for over 10 to 15 years. Mr. Hart stated that the crackdown on obtaining building permits had been recent and that he thought the expense of the validation process to a homeowner was being ignored or belittled.

Mr. Taves said that if the decision of DPWES was correct, then for lots that were purportedly created in this fashion 50 or 60 years ago, the validation process would be helpful to the homeowners.

In conclusion, Mr. Hart stated that the way in which it was being proposed that the BOS enact procedures to

~ ~ ~ March 11, 2003, continued from Page 300

fix the problem was a severe and expensive way that would impose a hardship on the property owner.

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~ ~ ~ March 11, 2003, (Tapes 2 and 3), Scheduled case of:

9:30 A.M. WILLIAM J. HILBERS, A 2003-MA-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property was not legally subdivided and is, therefore, not a buildable lot under Zoning Ordinance provisions. Located at 4610 Merritt Rd. on approx. 39,160 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((1)) 29 and 29A.

Diane Johnson-Quinn, Zoning Administration Division, presented staff's position as set forth in the staff report. The appeal was of a determination that neither of the appellant's lots were legally subdivided and Lot 29A did not comply with the Zoning Ordinance requirements in effect at the time of the recordation, thus were not buildable lots under the Zoning Ordinance provisions. The property consisted of two parcels; Lot 29, which consisted of 26,951 square feet; and Lot 29A, which consisted of 12,200 square feet; for a total area of 39,160 square feet. When recorded in 1952, Lot 29 met the lot size requirements in effect at the time; however, it was created by a metes and bounds description in the deed without the County subdivision approval. The Department of Public Works and Environmental Services (DPWES) previously determined that both lots did not comply with the Subdivision Ordinance requirements in effect at the time they were recorded; therefore, they were not legally subdivided. Based upon DPWES' determination, staff concluded that building permits could not be issued for Lot 29. Based upon DPWES' determination as to the subdivision legality combined with staff's determination that Lot 29A did not comply with the lot area or the lot width requirements in effect at the time it was subdivided, staff concluded that building permits could not be issued for Lot 29A. Ms. Johnson-Quinn stated that the proposed Subdivision Ordinance Amendment might offer a remedy for the appellant.

Mr. Hammack asked staff if the new Ordinance amendment would validate the two lots. Ms. Johnson-Quinn stated that validation could occur for Lot 29, which was developed and created in 1952, was located on a private road and had an existing dwelling unit on it. She said Lot 29A could not be validated because it did not meet the Zoning Ordinance requirements in effect at the time, but could be incorporated as one single lot.

Mr. Hammack asked staff if the deed for Lot 29 was recorded illegally and if the taxes collected were erroneously collected. Ms. Johnson-Quinn replied that the house predated the lot lines and the creation of the lot around the house was not in accordance with the provisions.

Mr. Hammack asked if it was staff's position that the residents of Fairfax County had no right to rely on the Clerk who recorded the deed and the person who issued building and demolition permits, and he asked whether the demolition permit on Lot 29 had been rescinded by the County because it acted illegally in granting it. Ms. Johnson-Quinn stated that a demolition permit had not been issued for Lot 29.

Ms. Gibb said that as she recalled it, in the validation process, the engineer had to write on the plat the deed book and page where the lot was created and the parent lot. She asked staff how that could be done if the County could not say where the lot was created. Patrick Taves, County Attorney's Office, replied that the lot was created after 1947, so it would not be an automatic validation. He said that either there was a metes and bounds description or a plat that was not approved by the County which was recorded. He stated that the requirements want the applicant to identify where the document was recorded.

Ms. Gibb asked if the applicant was required to show where every lot came out of the parent tract. John Friedman, Department of Public Works and Environmental Services (DPWES), stated that when the Zoning Ordinance was adopted in 1978, there was a density criteria added to the Zoning Ordinance where previously it was lot size and geometry. He explained that for those lots where density criteria had to be evaluated, they needed to know how many lots the parent lot was broken down into.

Ms. Gibb asked Mr. Friedman if the subject lot was one of those lots and if there was a requirement that you could not exceed the density. Mr. Friedman stated that not exceeding the density was a requirement.

~ ~ March 11, 2003, WILLIAM J. HILBERS, A 2003-MA-005, continued from Page 301

Ms. Gibb asked staff if validation involved checking the density of the lot. Mr. Friedman stated that it did if the lots were created after 1978.

Ms. Johnson-Quinn stated that the lot was created in 1952.

Mr. Taves explained that the provisions for a vacant lot required a plat that included a reference to the deed book and page number where such metes and bounds description or unapproved plat was recorded. He noted that there was a requirement that the plat identified the parent tract which was the last legally created parcel and all parcels within the parent tract currently shown on the Fairfax County tax map and a reference to the deed book and page number where the parcels were created by a metes and bounds description or unapproved plat be provided, which he said should come out in the title search of the properties.

Ms. Gibb said in the subject case the County was not able to locate the deed. Ms. Johnson-Quinn said that was true for the smaller parcel. Mr. Taves said that did not mean the deed did not exist and that he was unaware of the extent to which staff had conducted a title search.

Mr. Hammack asked Mr. Taves and staff if the County maintained a separate plat book where plats of irregular shape and size were recorded. Mr. Taves stated that he was not aware of one.

Ms. Gibb stated that there was one in archives.

Mr. Hammack stated that plats were recorded separately from the deeds.

Mr. Taves stated that he had no knowledge of what was done in Land Records.

Mr. Hammack asked Mr. Taves if DPWES had looked in Land Records for the plats. Mr. Taves stated that DPWES looks at all the information available to it and presented to it by the applicant.

Mr. Hammack stated that once something has been recorded, it is presumed to be correct, and the Clerk was not to record a deed if it did not meet legal requirements.

Mr. Taves explained that in evaluating the proposed Ordinance amendments, they spoke to the Clerk of the Court and asked how so many illegal lots were recorded. He stated that the answer they received was that when a person presented a metes and bounds description, a deed, or a plat, the Clerk was bound to record it in the Land Records and could not judge whether or not the plat or document met all the legal requirements.

Ms. Gibb explained that in the 1940's there was one Clerk recording. She stated that no one wanted to create an illegal lot and that it was a misdemeanor.

Mr. Pammel informed Ms. Johnson-Quinn and Mr. Taves that Lot 29A was created by a court order as a result of the Park Authority's acquisition, and he asked why, if it was created by a governmental entity, was it not a buildable lot. Ms. Johnson-Quinn replied that regardless of how the lot was made, if it did not meet the Zoning Ordinance requirements, it was not considered a buildable lot.

Mr. Pammel asked if it was the obligation of the Park Authority to acquire the property since it was created illegally. Mr. Taves stated that compensation was paid to the landowner at the time.

Mr. Pammel said that what the Park Authority did not want was left in private hands and it could not be built upon. Mr. Taves stated that it did not mean the owner had not received just compensation. He explained that in a condemnation case one could get damages for not only the value of the property that was taken, but for any damage that was done to the residue, and he said that if damage was done to the residue in the subject case, the owner would have been compensated at that time.

Mr. Hart explained that there were things that were not in the staff report that should have been. He stated that he would like to see a copy of the 1930 deed and that he would like to have a ledger card stating when the house was built.

Ms. Johnson-Quinn stated that all of the properties on Merritt Road were in one file and there were building

~ ~ ~ March 11, 2003, WILLIAM J. HILBERS, A 2003-MA-005, continued from Page 302

permits for other lots in that area, but there were no building permits on file for the subject lot.

Mr. Hart asked staff what the oldest document in the file was. Ms. Johnson-Quinn stated that she was not sure what the oldest document in the file was.

Mr. Hart stated that if the earliest document was later than 1948, there could be another place that the older information was filed.

Ms. Johnson-Quinn stated that the record keeping was not as thorough as it should have been and there had been older files found periodically.

Mr. Hart stated that he would like to see a court file for At Law 35652, which would explain what was condemned. He explained that the Park Authority did not own the property, that Mr. Hilbers owned it. He explained that the condemnation court file should have a petition for condemnation contained in it and other papers that would explain what happened in 1976.

Ms. Johnson-Quinn explained that a person in the County Attorney's Office was searching for that information and had not been able to locate it. Mr. Hart stated that there were files older than 1976 in archives that were available.

Mr. Hart asked staff if any of the conveyances or cuts between 1931 and 1952 affected Lot 29. Ms. Johnson-Quinn stated that Merritt Sandborn originally acquired the lot in 1931, and that was the first cut after the 1929 Ordinance, and from that point on was when the other cuts occurred.

Mr. Hart stated that there was a plat recorded with the deed in 1952 and asked if the problem with the plat was that no one signed off on the plat. Ms. Johnson-Quinn stated that was correct.

Mr. Hart asked if that was a mistake of the Clerk of the Court. Ms. Johnson-Quinn stated that the lot did not meet subdivision requirements and that it was recorded in violation of the Subdivision Ordinance.

Mr. Hart stated that Attachment 5 had another plat attached to it. He stated that there was a plat for the larger piece of the lot and that a lot was taken off. He asked staff if they would have had to have done a different plat for the residue. Ms. Johnson-Quinn stated that they did not do plats for residue and she was not sure if that was a requirement.

Mr. Hart asked staff if the lot shown in the plat met the requirements of the Zoning Ordinance in 1952. Ms. Johnson-Quinn stated that it did.

Mr. Hart asked if the lot that was divided off of the previous lot met the Zoning Ordinance requirements of 1952. Ms. Johnson-Quinn stated that it did.

Mr. Hart asked if the residue that was left after the subdivision met the Zoning Ordinance requirements of 1952. Ms. Johnson-Quinn stated that it did.

William Shoup, Deputy Zoning Administrator, explained that many of the questions asked by Mr. Hart were related to determinations made under the Subdivision Ordinance by DPWES staff.

William Baskin, Agent, presented the appeal request as outlined in the statement of justification submitted with the application. He explained that the purpose of the appeal was to get permission to build on Lot 29. He stated that Mr. Hilbers purchased the home the previous June and it was his intention to rebuild due to termite infestation and other damage beyond repair. He said Lot 29A was purchased at the same time. He stated that Lot 29A was not a buildable lot and was assessed at \$500. Mr. Baskin explained that the land use was described as recreational use. He stated that the tax records for Lot 29 showed a land use of residential, and it described the dwelling and year of construction. He stated that the County recently approved installation of a sanitary sewer between Lots 29 and 31, and Lot 31A had tapped into the sewer line. Mr. Baskin explained that the area and lot width requirements for Lot 29 exceeded the Zoning Ordinance requirements at the time it was created and at present. He stated that the County had collected taxes for over 50 years on the property. He said the house existed on the property before the creation of the lot. Mr. Baskin stated that the County had already made the determination that the lot was buildable every

year with the reassessment for tax purposes. He explained that the Subdivision Ordinance did not state that a lot that was not subdivided in accordance with its provisions was not buildable. Mr. Baskin said that provision was contained in the Zoning Ordinance. He said that the Subdivision Ordinance made it illegal by providing that the Clerk did not record a plat without appropriate County approval. Mr. Baskin asked what actions the County had taken against the Clerk of the Court for violating the provisions of the Ordinance. He stated that the lot was created in 1952, and at that time there was a division of Lot 29 and Lot 31. Mr. Baskin explained that the lot was created legally at the time and met all of the Zoning Ordinance requirements at the time and currently met all of the requirements.

Ms. Gibb asked Mr. Baskin if he felt that 29A was a buildable lot. He stated that he did not.

Ms. Gibb asked Mr. Baskin if he thought that under the existing Subdivision Ordinances that Lot 29 was a legal lot because the first cut involved a cut of 10 or more acres. He stated that he felt Lot 29 was legal.

Mr. Hammack asked Mr. Baskin if he had looked into any legal issues surrounding the appeal. Mr. Baskin stated that he had not looked for specific laws, but that in 1995 the Statute concerning appeals to the BZA was amended, and that required that in no event shall a written order, requirement, decision, or determination made by the Zoning Administrator be subject to change or modification or was reversible by the Zoning Administrator or other administrative officer after 60 days had elapsed from the date of the written decision where the person aggrieved had materially changed his position in good faith.

Mr. Hammack asked Mr. Baskin and staff if they had found any cases that might have been decided under the Statute. Mr. Taves stated that he was not familiar with any cases that had applied the Statute to any situations. He explained that estoppel did not apply to a governmental entity. He stated that Mr. Baskin's argument was estoppel and that was incorrect as a matter of law.

Mr. Hammack stated that was true, but said if you do research, sometimes you could find exceptions. He stated that grandfathering allowed things that were not in compliance to remain.

Mr. Taves stated that there was a difference between estoppel and grandfathering. He said grandfathering was done by the legislative body.

Mr. Hammack asked if the County had any legal authority to say that the BZA had no authority to hear these appeals. Mr. Taves said yes and explained that the BZA was a creature of the Statute. He stated that the BZA did not have the authority to remedy Mr. Hilbers' problem. Mr. Taves stated that if Mr. Baskin did not agree with DPWES, he could go to court and ask for a declaratory judgment.

Mr. Hammack stated that the BZA should have as much information as possible to make a correct decision and he felt that they had not been given all the documentation.

Ms. Gibb asked staff what the effect of having the Zoning Administrator's signature required on a demolition or building permit. She stated that DPWES was currently making decisions to avoid going to the BZA. Mr. Taves said that DPWES could not provide the BZA with jurisdiction if it did not already exist.

Mr. Baskin stated that he wanted to explain the issue of whether it was an appeal of the Subdivision Ordinance or the Zoning Ordinance. He said that two months ago the issue was heard by the BZA and it was agreed by the BZA to accept the appeal. He said he was not sure if any additional filing needed to be made. He stated that staff insisted that if he wanted to continue, he needed to file another petition, and agreed to waive the filing fee.

Mr. Hart stated that overruling the Zoning Administrator should not be taken lightly. He said the authority that the BZA had not been given was on the issue of whether the Zoning Administrator could distinguish themselves from deciding questions that involved Subdivision Ordinance questions. He stated that in order for the Zoning Administrator to make a buildable lot determination, she had to make reference to other things. Mr. Hart said the Subdivision Ordinance issue dealt with a misdemeanor, but the questions were given to the Zoning Administrator, and there was no effort by staff to make a distinction of whether the Subdivision Ordinance was not incorporated within.



~ ~ ~ March 11, 2003, WILLIAM J. HILBERS, A 2003-MA-005, continued from Page 304

Mr. Hammack stated that Section 18-603 of the Zoning Ordinance stated that no building permit should be issued for the erection of any building or structure on a lot or addition or modification of a building or structure that was in violation of any of the provisions of Chapters 101, 116, and 118. He stated that the authority to withhold a building permit encompassed other things.

Mr. Hart asked if a signature by the Zoning Administrator on a building permit was a determination within the meaning of the Statute. He asked Mr. Baskin if any building permits since 1945 had been issued for Lot 31 and for what.

Mr. Baskin stated that tax records showed there was an addition built in 1966. Mr. Baskin stated that he had looked in the street file for Lot 29 and was unable to find any permits. Mr. Baskin stated that he received a letter from DPWES stating that permits were only required to be kept for three years.

Mr. Hart asked how the outlet road became a public road. Mr. Baskin stated that the frontage Mr. Hilbers had was on an outlet road which leads to Merritt Road.

Mr. Hart stated that if Mr. Hilbers' frontage was on the outlet road, he would like to know whose road it was.

Chairman DiGiulian called for speakers.

Roger Dunn, owner of Lot 32 and co-owner of Lot 31, stated that 15 to 20 years ago the front of the property was owned by Sandborn. He said that they sold it to a townhouse complex and rerouted the road and that was public road. He said 15 years ago the County made everyone hook up to County water. He said the County also offered sanitary sewer instead of septic.

Mr. Hart asked Mr. Dunn if he pulled a permit for Lot 31. Mr. Dunn said that was correct.

Mr. Hart asked Mr. Dunn how long ago the permit was pulled. Mr. Dunn stated that it was four years ago.

Mr. Hilbers thanked the Board for hearing the case. He said he purchased the lot a year ago with the intention of fixing the current house. He stated that he decided he was going to build a new house and found that the lot was an illegal lot. He explained that at that time he found there was a termite infestation. He explained that he currently owned two lots in the neighborhood and both were said to be illegal lots.

Ms. Gibb asked the applicant how much was paid for Lot 29. Mr. Hilbers stated that he paid \$220,000.

Ms. Gibb asked the applicant where his second lot was located. Mr. Hilbers stated that it was Lot 22.

Mr. Hammack asked staff what the County would do if the illegal lot was not appealed. Mr. Shoup stated that no further building permits could be issued.

Mr. Pammel asked, if a lot was determined to not have been properly approved, there was a subdivision created, and the lot was improved, what was the status of the subdivision and all of the homes. Mr. Friedman stated that the BOS would meet in two weeks and decide on the provisions set forth for consideration which would validate all of the lots.

Karen Buchette, representative of Merritt Road LC, stated that she had been notified that she was an owner of an illegal lot which was bought in 2001. She stated that she was concerned because she had money invested in the lot and she could not resell. She stated that she had intended to demolish the current house and build a new house and now she could not. She said it was unfair that the house had been sold many times before and nothing was done and now she had to pay.

Chairman DiGiulian stated that the BZA was not telling her that she owned an illegal lot.

Ms. Buchette stated that the assessment of the property had been raised \$60,000. She said she had a title search done on the lot, and it showed that nothing was wrong with the lot.

In reference to Ms. Gibb's earlier comment regarding the change in procedure being done to preclude issues coming before the BZA, Mr. Shoup said the Zoning Administrator was making decisions that were supposed

~ ~ ~ March 11, 2003, WILLIAM J. HILBERS, A 2003-MA-005, continued from Page 305

to be made by DPWES under the Subdivision Ordinance. He stated that he wanted to clarify that there was no decision made to preclude anything and it was done because they were making determinations that they should not have been.

Mr. Baskin said the decision should be decided in favor of the innocent landowners.

Mr. Kelley asked Mr. Baskin if he thought it would be helpful for the BZA to receive all of the information that was requested before making a final decision. Mr. Baskin stated that he could look for the information himself. He said he was not sure if additional information would vary the outcome.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on A 2003-MA-005 to March 25, 2003, at 9:30 a.m., to allow time for the information the BZA requested to be gathered. Mr. Pammel seconded the motion.

Ms. Gibb stated that she was prepared to vote without the deferral because she believed the lots were legally created based on the testimony of the applicant regarding when the first cut occurred. She said she felt the case could get muddled up waiting for the BOS and was concerned about the issue of the authority of the BZA being raised extraneously after a determination had been made regarding the issue. She added that she would support the motion if the other members wanted to defer decision.

Mr. Kelley and Chairman DiGiulian stated that they were prepared to vote without the deferral.

Mr. Hart said that receipt of the information the BZA had requested would provide additional factual and legal basis for their decision.

Mr. Hammack stated that the BZA should have as complete a record as possible.

Chairman DiGiulian called for the vote. The motion to defer decision on A 2003-MA-005 to March 25, 2003, at 9:30 a.m., carried by a vote of 4-3. Mr. Kelley, Mr. Ribble, and Chairman DiGiulian voted against the motion.

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~ ~ ~ March 11, 2003, (Tape 3), Scheduled case of:

9:30 A.M. PETER W. AND LESLIE L. BERK, A 2002-DR-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination, by the Department of Public Works and Environmental Services, that appellants' property was not legally subdivided. Located at 10616 Good Spring Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 7. (Concurrent with A 2003-DR-008).

9:30 A.M. PETER W. AND LESLIE L. BERK, A 2003-DR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property was not legally subdivided and is, therefore, not a buildable lot under the Zoning Ordinance provisions. Located at 10616 Good Spring Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 7. (Concurrent with A 2002-DR-045).

Mr. Hart recused himself from the hearing.

Jayne Collins, Zoning Administration Division, presented the request as contained in the staff report. She said it was determined by the Department of Public Works and Environmental Services (DPWES) that the applicant's lot was not legally subdivided in accordance with the Subdivision Ordinance. The property was created by a metes and bounds description recorded in the land records on August 3, 1953. Ms. Collins stated that this case differed from the last in that the deed which created Lot 7 also dedicated a 50-foot strip of land for public road purposes. She explained that at the time the property was created, it was zoned agricultural and met the zoning requirements for minimum lot area and width; however, under the provisions of Section 18-603 of the Zoning Ordinance, a building permit could not be issued for the construction of a

~ ~ ~ March 11, 2003, PETER W. AND LESLIE L. BERK, A 2002-DR-045 and A 2003-DR-008, continued from Page 306

dwelling on a lot which did not comply with the Subdivision Ordinance. She said Lot 7 complied with the current R-1 District regulations for minimum lot area and width, but DPWES could find no evidence that the creation of the lot obtained the requisite County subdivision approval. Ms. Collins said that DPWES does not investigate the creation of a lot when permits are issued. She stated that it was possible that the lot could be validated if the provisions were approved by the Board of Supervisors (BOS).

Mr. Pammel asked if Lot 7 was part of the Springwood Subdivision. Ms. Collins stated that it was not.

Mr. Pammel asked if the Springwoods Subdivision was legally created. Ms. Collins said that it was not investigated.

Lynne Strobel, Walsh, Colucci, et al., the appellants' agent, said the property had the same lot size since it was originally created in 1953 by a metes and bounds conveyance. She said it was common practice at the time to not have a plat attached to the deed. She said that the deed was accepted by the Clerk of the Court and was recorded among the Land Records. Ms. Strobel explained that a house was constructed on the property in 1953, and the County cited that there was no evidence of a building permit. She said the County stated that its record keeping at that time was not as accurate as it was today. She said a building permit was approved on October 1, 1980, to remodel the second floor of the house. Ms. Strobel explained that when the appellants decided to demolish the house, a demolition permit was approved by the County and signed by the Zoning office. She stated that in April of 2002, the house was demolished. She said a grading plan was returned stating that the lot was not legal. Ms. Strobel said that the County viewed the lot as legal for 50 years, as evidenced by the payment of taxes and the issuance of a permit in 1980. She stated that the lot was assessed at over \$500,000. She stated that the property met all requirements for the R-1 District. Ms. Strobel said it was created in a manner which was common practice at the time.

Mr. Berk stated that he purchased the property in May of 2000. He stated that he did not understand why different parts of DPWES had approved permits and approved the demolition of the house which he could be living in. He stated that he had been paying about \$3,000 a month for the property for three years, had incurred \$120,000 in fees with a builder for architectural drawings and demolition, and had incurred significant fees with legal counsel. Mr. Berk stated that he could not dispose of the property if he needed to because it was declared illegal. He asked staff what he could do. He said the case had been postponed countless times. Mr. Berk stated that he was regretful that he was a resident of Fairfax County.

Ms. Gibb asked John Friedman, Department of Public Works and Environmental Services, what the validation process would be for this lot. He stated that if the property had public street frontage and met the Zoning Ordinance requirements, it would be eligible for validation through submission of a plat.

Ms. Gibb asked how long the process would take. Mr. Friedman stated that it would be expedited and would take about 30 days to review the plat once submitted.

Ms. Gibb stated that she knew that DPWES was trying to help, but the process was so costly and so time consuming that it burdened people.

Chairman DiGiulian asked how it was determined that a property was in need of drainage improvements. Mr. Friedman stated that there was an evaluation of any offsite drainage complaints, topography, and drainage through the lot.

Chairman DiGiulian stated that there was a stream running through the lot and asked if the appellant would be required to provide topography of the lot. Mr. Friedman stated that they would not require the appellant to provide topography.

Chairman DiGiulian asked how it was determined what was needed for drainage improvements. Mr. Friedman stated they might require the engineer who submitted the plat to provide cross-sections of the stream.

Mr. Shoup stated that the creation of the lot involved dedication of right-of-way and it was subject to the subdivision regulations in effect at the time a plat was required to be submitted to the County.

~ ~ ~ March 11, 2003, PETER W. AND LESLIE L. BERK, A 2002-DR-045 and A 2003-DR-008, continued from Page 307

Ms. Strobel said there was not a plat, but the County issued a building permit and issued a demolition permit. She said the property owner was led to believe that he could build a house on the property. She stated that she believed that the plan being reviewed in 30 days was extremely ambitious.

Ms. Gibb said there was a dedication, and she said knew and highly respected Mr. Lay who prepared the deed in 1953. She stated that lots prior to 1945 were automatically validated.

Mr. Taves explained that if DPWES could conclude that a lot was legally created, they would like to. He stated that in cases such as the subject one, they did not have the documentation to do so. Mr. Taves stated that if it was a pre-1947 lot, which he understood the subject lot was not, and it met the Zoning Ordinance requirements, it would be automatically validated under the validation provisions, if approved. Mr. Taves noted that the 60-day provision, which was mentioned by William Baskin in the previous hearing, states that it shall not apply in any case where, with the concurrence of the attorney for the governing body, modifications were required to correct clerical or other nondiscretionary errors. Mr. Taves said the current case fell into the category of a nondiscretionary error.

Mr. Pammel stated that the parcel was part of a 71-acre parent parcel. He asked H. Mark Goetzman, Walsh, Colucci, et al., what happened prior to 1953. Mr. Goetzman explained that the deed was dated August 10, 1942. He said Joseph L. Money and Ida Money conveyed 71.21 acres to Marion Stanley Money and Nelly May Money. He said they conveyed to Arnett the current 4.1812 acres in 1953. Mr. Goetzman said the first Money deed had no plat attached. He stated that had come from an earlier deed in December of 1932. Mr. Goetzman said John W. Rush conveyed to Joseph Money 109 acres and 34.5 acres. He stated that there was a plat attached to that deed. He stated that if you looked at the deed, it described the 4.1 acres, but that was not recorded in the Land Records. Mr. Goetzman said that it referred to a plat, which led you to believe there was a plat, but it had not been located.

Ms. Gibb asked what the date on the deed book was. Mr. Goetzman said it was December 6, 1932.

Ms. Gibb asked Mr. Goetzman if it was a partition. Mr. Goetzman stated that it was.

Ms. Gibb stated that in a partition you did not need subdivision approval.

Ms. Gibb asked Mr. Goetzman if it was a special commissioner. Mr. Goetzman stated that it was.

Ms. Gibb asked if in 1942 the 71.21 acres came out of the 109 acres, the 34.5 acres, or both. Mr. Goetzman stated that it came out of both.

Ms. Gibb asked how many conveyances out there were between 1942 and 1953. Mr. Goetzman stated that there was one.

Ms. Gibb asked how large that conveyance was. Mr. Goetzman stated that it was 1.2 acres and it was in 1951.

Ms. Gibb asked if that left 60 acres. Mr. Goetzman said that in the conveyance language, after the conveyance of 4.1 acres, it read "together with the right to use, in conjunction with others, the following 50-foot strip of parcel of land which is hereby dedicated as a public road."

Ms. Gibb stated that this was a title issue and was not an easy one. She stated that she did not have enough information to make a decision.

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

Ms. Gibb moved to defer decision on A 2002-DR-045 and A 2003-DR-008 to March 25, 2003, at 9:30 a.m., and asked that information be provided regarding what happened with the property between 1942 and 1953 and whether the road was a true dedication and not an easement.

Mr. Pammel seconded the motion and commented that he would like more information regarding any

~ ~ ~ March 11, 2003, PETER W. AND LESLIE L. BERK, A 2002-DR-045 and A 2003-DR-008, continued from Page 308

connection between the Berks' parcel and the Ivan J. Money Subdivision located to the southeast and whether the Springwood Subdivision was part of the original parent tract.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Hart recused himself.

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~ ~ ~ March 11, 2003, (Tape 3), After Agenda Item:

Approval of March 4, 2003 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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~ ~ ~ March 11, 2003, (Tape 3), After Agenda Item:

Approval of a Revised Plat submitted by Nasr and Shaista Chaudhry

Mr. Hammack stated that he agreed with the Chaudhrys that the second revised plat represented a more satisfactory resolution than the first revised plat in that it left the fence on the property line and the fence followed around and followed the perimeter of the entrance feature, but he said that it could not be approved because it was not part of the original motion. He said the applicants had to either bring the fence into compliance with the Ordinance, which would be four feet in the front yard, or readvertise and ask for six feet along the property line. Mr. Hammack noted that the fence on the second revised plat ended at the entrance feature, but he recalled the motion was to have the fence parallel behind the entrance feature.

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the Board had requested that the applicants or their agent be present and advised the Board that they were in attendance.

Charles Radigan, agent, stated that the applicants wished to reapply for a variance with a proposed plan of lowering the fence to six feet and beautifying the fence with plantings.

No action was taken by the Board on the revised plat.

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As there was no other business to come before the Board, the meeting was adjourned at 1:15 p.m.

Minutes by: Alison A. Capo

Approved on: September 21, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
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 18, 2003. The following Board Members were present: John DiGiulian, Nancy Gibb, James Hart, Paul Hammack, Robert Kelley, James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 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.

~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      TIMOTHY VONWOLFFRADT, VC 2002-SU-203 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line such that side yards total 23.0 ft. and 18.0 ft. from rear lot line. Located at 13502 Coates La. on approx. 5,021 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (8) 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. Timothy Vonwolffradt, 13502 Coates Lane, Herndon, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of a sunroom 4.0 feet from the side lot line such that side yards total 23.0 feet, and 18.0 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet with total minimum side yards of 24.0 feet; therefore, variances of 4.0 and 1.0 feet were requested for the side yards. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 6.8 feet was requested for the rear yard.

Mr. Hart questioned the shed attached to the house and the next door neighbors' home. Ms. Langdon stated that the sheds were approved with the original development plans for the PDH Zoning District. She stated that the houses in the neighborhood all had sheds that connected to the next door neighbor, which was approved under the original development plan and, therefore, was permitted and did not count toward the side yard requirement.

Bob Angel, Agent, Long Fence, came to the podium to speak on behalf of the applicant. Mr. Angel presented the variance request as outlined in the statement of justification submitted with the application. He stated that the project has been ongoing for approximately 9 months. He stated that the home was small and the proposed sunroom on the rear of the home would give the applicant year around space required for his family. He stated that no one would view the 14 x 12 foot addition, and therefore, it would cause no visual impact. Mr. Angel stated that the addition would be in keeping with the neighborhood and would increase the value of the property and therefore asked for the Board's approval of the application.

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

Mr. Hammack moved to approve VC 2002-SU-203 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TIMOTHY VONWOLFFRADT, VC 2002-SU-203 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line such that side yards total 23.0 ft. and 18.0 ft. from rear lot line. Located at 13502 Coates La. on approx. 5,021 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (8) 69. 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 18, 2003; 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 is in a PDH-2 District.
4. The applicant seeks an extension of the existing side of the house by 12 feet, which will result in a variance at the very maximum right rear corner of only 2 feet with a small section of the addition only requiring the need for the variance.
5. The request does not change the character of the Zoning district, especially given that these houses have sheds that connect and block off sight lines.
6. The addition will be in harmony with the intent, spirit and purpose of 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 the addition shown on the plat prepared by Francis B. Collinson of Advanced Associates, dated September 2002, as revised through November 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.



~ ~ ~ March 18, 2003, TIMOTHY VONWOLFFRADT, VC 2002-SU-203, continued from Page 312

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 March 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:00 A.M.       STEPHEN R. LAURINE, VC 2003-PR-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. from side lot line. Located at 8016 Elm Pl. on approx. 19,911 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 115.

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 Laurine, 8016 Elm Place, Dunn Loring, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of an addition 12.3 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a variance of 7.7 feet was requested.

Mr. Laurine presented the variance request as outlined in the statement of justification submitted with the application. He stated that the addition was required due to his family growth. He stated that he chose a location off of the kitchen to permit the most side yard clearance possible. Mr. Laurine stated that the upper level of the two story addition would expand the kitchen to create a family room and a mud room, which would be transitioned to the two car garage below. He stated that a proposed future bedroom would be in front of the two car garage. Mr. Laurine stated that the addition would improve the appearance of the property because it would eliminate the deck on the side of the home. He asked for the Board's approval of the application.

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

Mr. Pammel moved to approve VC 2002-PR-001 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN R. LAURINE, VC 2003-PR-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. from side lot line. Located at 8016 Elm Pl. on approx. 19,911 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 115. 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 18, 2003;

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 narrow lot width as cited by the applicant requires the need for the variance.
4. The fact that the lot is less than a half-acre in an R-1 District would make the lot, by size, more appropriately an R-2 District zoning.
5. The variance request is relatively minimal and will meet the standards and criteria as set forth in 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 the addition shown on the plat prepared by Richard H. Bartlett of Bartlett Consultants, Ltd. dated November 13, 2002, as revised through December 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.

~ ~ ~ March 18, 2003, STEPHEN R. LAURINE, VC 2003-PR-001, continued from Page 314

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 March 26, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      RODNEY & STACEY ROYSTON, VC 2002-LE-200 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. and eave 13.9 ft. from side lot line. Located at 6317 Colette Dr. on approx. 21,847 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((6)) (3) 12. (Admin moved to 4/22/03 for notices)

Chairman DiGiulian noted that the application was administratively moved to April 22, 2003, at 9:00 a.m.

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~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      STEPHEN A. & JENNIFER W. COURTNEY, SP 2002-SU-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 addition to remain 11.0 ft. from side lot line. Located at 3212 Foxvale Dr. on approx. 1.0 ac. of land zoned R-1. Sully District. Tax Map 46-2 ((9)) 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. Stephen Courtney, 3212 Foxvale Drive, Oakton, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested a reduction to the minimum yard requirements based on error in building location to permit a detached garage to remain 11.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore a modification of 9.0 feet is required.

Mr. Courtney presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Courtney stated that upon hiring his architect it was determined that the garage was not built in the location specified, which was built 25 years ago. He stated that the request was to attach the existing garage which would provide a larger space and improvements to the home. He stated that the request would remain within the proper setback of 20.0 feet and therefore asked for the Board's approval of the application.

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

Mr. Hart moved to approve SP 2002-SU-068 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN A. & JENNIFER W. COURTNEY, SP 2002-SU-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 addition to remain 11.0 ft. from side lot line. Located at 3212 Foxvale Dr. on approx. 1.0 ac. of land zoned R-1 Sully District. Tax Map 46-2 ((9)) 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 March 18, 2003; 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, as shown on the plat prepared by Ned A. Marshall, dated October 23, 2002, as revised through November 8, 2002, submitted with this application and is not transferable to other land.

~ ~ ~ March 18, 2003, STEPHEN A. & JENNIFER W. COURTNEY, SP 2002-SU-068, continued from Page 316

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 March 26, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KYLE P. MAY, VC 2003-MA-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in front yard. Located at 6831 Little River Trnpk. 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.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant requested existing fences 7.0 feet and 6.0 feet in height located in a front yard to remain. The Zoning Ordinance permits a maximum height of 4.0 feet; therefore, variances of 3.0 feet and 2.0 feet were requested.

Mr. May presented the variance request as outlined in the statement of justification submitted with the application. Mr. May read his statement of justification to the Board for the record stating his reasons for his request.

Mr. Hammack asked if the only changes he had made to the original application was to pull in three separate sections of the existing fence. Mr. May stated that was correct.

Mr. Hammack asked if there was any documentation showing that visibility was improved sufficiently according to VDOT standards. Mr. May stated that based on the photographs provided with the original application it showed the visibility improvement.

Mr. Hammack expressed his concern, stating that VDOT had standards and questioned whether or not the changes satisfied their requirements. Mr. May stated that the fence, as it existed, did satisfy VDOT's standards. Mr. May stated that he did exactly what the Board suggested prior to refiling his variance application by pulling the three separate sections in to improve visibility. Mr. May stated that he had discussed with a VDOT representative, Robert Bell, the requirements of visibility prior to installation.

Mr. Hammack noted that a letter of opposition was received regarding the visibility of the fence in reference to his driveway. Mr. May responded to the letter stating that Mr. Gaetano, the neighbor who submitted the letter in opposition, was originally in support of the application. He stated that he was unsure of what had changed his mind; however, reviewed his points in the letter and referred to the photographs provided in the original application to the Board showing that the fence was set back and down the slope from the asphalt shoulder which would not place anyone in danger. Mr. May stated that Mr. Gaetano's property was far west of his property, and therefore, the fence would not affect his sight limitations onto Route 236.

Mr. May stated that because his 7-foot high fence was located below the street level of Little River Turnpike, it should actually be considered a 6-foot high fence, which he stated helped block noise pollution as well as projectiles thrown from vehicles.

Chairman DiGiulian called for speakers in support of the application.

Tara Aldis, 6831 Little River Turnpike, Annandale, Virginia, resident of the subject property, stated that they

~ ~ ~ March 18, 2003, KYLE P. MAY, VC 2003-MA-006, continued from Page 317

owned two large dogs which were capable of jumping over a 4-foot or 5-foot fence. She expressed her concern about their safety as well as trash and debris coming from cars from Little River Turnpike and, therefore, asked the Board to allow the fence to remain.

Chris Ludwig, 6831 Little River Turnpike, Annandale, Virginia, tenant of the subject property, also expressed the issue of the safety for the dogs as well as trash and debris coming from cars from Little River Turnpike.

Chairman DiGiulian called for speakers in opposition of the application.

Chris Gaetano, 6833 Little River Turnpike, Annandale, Virginia, stated that when pedestrians walked they were on both side of his driveway and the fence blocked their visibility. He also stated that a 4-foot fence would be able to stop debris from coming into their yard because the properties were far enough away from the roadway.

Mr. May, in his rebuttal, stated that Mr. Gaetano's driveway was at least 90 feet if not farther from the edge of his fence, and therefore, there could not be any issue with regard to visibility.

Mr. Hammack asked why a 7-foot fence was necessary along the east property line. Mr. May stated that the County had installed a 7-foot fence at one location on the east side of his property and he was proposing to extend that fence and keep it consistent. Mr. Hammack stated that the request was more than he would agree to. Mr. May stated that he could make that section of fence 6-foot high if that would satisfy the Board.

Mr. Hammack stated that generally the Board did not grant 7-foot high fences in a front yard. He stated that in this case the fence was directly on the property line and affected visibility. Mr. Hammack stated that along the east property line a 7-foot high fence could not be supported.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 2003-MA-006 for the reasons stated in the Resolution.

Ms. Gibb stated that the issues the Board reviewed for a fence variance included site distance and aesthetics, which was subjective. She stated that the concern was when there was a fortress-like appearance and how close a fence was to the property line. She stated that the application had those issues, and therefore, she supported the motion.

Mr. Hart concurred with Ms. Gibb and stated that his issue was a 7-foot high fence as opposed to a 6-foot high fence.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KYLE P. MAY, VC 2003-MA-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height 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. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 18, 2003; and

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

1. The applicant has not satisfied the requirements for the granting of a variance.

~ ~ ~ March 18, 2003, KYLE P. MAY, VC 2003-MA-006, continued from Page 318

- 2. It would cause a problem if every dog owner required a six or seven foot fence in their front yard.

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

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

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

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

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

Mr. 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. 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 March 26, 2003.

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~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:30 A.M. DANIEL E. BELSOLE, A 2002-MA-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that an addition consisting of a garage and an accessory storage structure has been erected on the appellant's property in violation of the minimum setback requirements of the Zoning Ordinance. Located at 5106 Redwing Dr. on approx. 20,000 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((21)) 9. (Admin moved to 4/29/03)

Chairman DiGiulian noted that the appeal application had been administratively moved to April 29, 2003, at 9:30 a.m.

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~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:30 A.M. JOHN W. JACKSON, A 2002-MA-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that no Building Permit can be issued for the erection of any building or structure on the appellant's property, in accordance with Par. 1 of Sect. 18-603 of the Zoning Ordinance. Located at 5909 Summers La. on approx. 19,715 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((1)) 56.

Dolores Kinney, Zoning Administration Division, made staff's presentation as contained in the staff report. She stated that the appeal was of a determination that a building permit could not be issued for the referenced property. She stated that staff responded to the appellant that the property met the minimum lot width and area for the zoning district; however, it could not be determined that the property met subdivision regulations, and the appellant was advised so. She stated that under Paragraph 1 of Section 18-603 of the Zoning Ordinance, a building permit could not be issued for any property which did not meet subdivision regulations; therefore, the appellant was advised to contact the Department of Public Works and Environmental Services (DPWES) to confirm and obtain subdivision information. Instead, the appellant chose to appeal the Zoning Administrator's determination. Ms. Kinney stated that a building permit could not be issued for a lot which did not meet subdivision regulations. Ms. Kinney advised the Board that there was currently a Subdivision Ordinance amendment under review which should be approved on March 24, 2003, that may impact this particular property and hopefully remedy the situation.

Ms. Gibb questioned if Section 18-603 was always a part of the Zoning Ordinance regarding the issuance of a building permit. Mr. Shoup stated that it has been since the 1978 Ordinance.

Ms. Gibb then confirmed that in 1952, when the subject property was constructed, it was not a requirement under the Zoning Ordinance to be properly subdivided to obtain a building permit. Mr. Shoup stated that there was no specific language in the Zoning Ordinance in effect at that time

Mr. Hart reviewed the history of the lot with Ms. Kinney. He asked if a demolition permit was issued for the house that existed on the property. Ms. Kinney stated that during research she could not find permits for either the demolition or the building. Ms. Kinney stated that the house appeared to be constructed sometime between 1950 and 1952. Ms. Kinney stated that she had obtained Deed history dating back to 1927-1928 which showed that there was one major parcel created by Deed in 1928 which resulted in the current parcel and several lots had been created since. Mr. Hart stated that this was the type of information which should be made available to the Board for their review.

William Baskin, the agent representing the appellant, stated that the lot was nearly double the size required in the Zoning District and had more than twice the lot width. Mr. Baskin stated that the house appeared to be built in 1959 according to the tax records in 2000. He stated that the property was taxed at a rate which would indicate that it was a buildable lot. Mr. Baskin stated that when Mr. Jackson acquired the property, he had to pay several years of delinquent taxes which had existed at the time. He stated that it appeared a building permit had been issued considering it was taxed as such. He stated that although the property did not meet the standards that were applied today, it apparently had met those standards at the time. Mr. Baskin stated that in 1947 at the time of the Subdivision Ordinance adoption, the lot was a 2.6 acre parcel, with a half acre parcel cut from that, and from that parcel in 1948 the subject lot was created, and therefore, it appeared that it was not the first cut. He stated that in 1959 the County determined the lot to be buildable and since then had been taxed as such, and consequently, the Board should reverse the determination of the Zoning Administrator.

Mr. Shoup stated that the bottom line of the request was that Section 18-603 prevented the Zoning Administrator from issuing a building permit to construct a structure on a lot if it did not meet Subdivision Ordinance requirements. He stated that there was no basis to reverse the Zoning Administrator's decision.

Mr. Baskin replied by stating that the request was not simply based on the tax records or the fact that Mr. Jackson had paid taxes. It was based on the fact that the County had to prove that Section 18-603 did not exist at the time it was determined to be a buildable lot. He stated that the lot was buildable prior to the buildable lot section of the Zoning Ordinance.

The Board discussed the Subdivision Ordinance regulations and Zoning Ordinance requirements with Mr. Shoup, to include a discussion of building permits and equities applicable to the lot.



~ ~ ~ March 18, 2003, JOHN W. JACKSON, A 2002-MA-047, continued from Page 320

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

Ms. Gibb stated that she had reviewed this lot with the Courts and found it to be a lot from the parent tract dating back to June 27, 1948. She expressed her opinion that you did not need a plat approved to have a legal lot prior to 1947, unless you were dedicating street frontage.

Ms. Gibb moved to overturn the Zoning Administrator, stating that it was her determination that the Zoning Ordinance did not require that you had a legal lot in order to obtain a building permit. She stated that the validation process was not equitable for this appellant or any other and, therefore, should not be offered as a solution to the problem.

Mr. Ribble seconded the motion.

Mr. Hart commented that the recent attempt to distinguish between Subdivision Ordinance and Zoning Ordinance questions was incorrect and was an incorrect reading of applicable Ordinance provisions. He stated that Section 18-602 required that applications for a permit shall be on forms provided by the County and shall be approved by the Zoning Administrator prior to issuance, and he said that placed the duty for determinations regarding buildability and issuances of building permits within the scope of responsibility under the Ordinance of the Zoning Administrator.

Mr. Hart said that Section 18-603, Subsection 1, stated that no building permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116, or Chapter 118 of the Code, the Ordinance, all other applicable laws and ordinances, any proffered conditions. He said there were some exceptions procedurally called out, but he said it was clear that the Zoning Administrator, in making his or her determination of buildability, had to review the first four items.

Mr. Hart said that Section 18-301 stated that any person aggrieved or an officer, et cetera, affected by any decision of the Zoning Administrator may appeal such decisions to the BZA. He said that the recent effort to distinguish certain categories of decisions by the Zoning Administrator was strained and contrived in light of the wording "any decision of the Zoning Administrator." He said there was a restriction on appeals of proffered conditions that would go before the Board of Supervisors (BOS), but otherwise any person aggrieved by any decision of the Zoning Administrator without limitation would come to the BZA.

Mr. Hart said the BOS could amend the Ordinance to deprive landowners of the power to appeal certain kinds of decisions or restrict the Zoning Administrator's purview.

Mr. Hart said that Section 18-102 dealt with the duties of the Zoning Administrator and included applications for building permits, performance of such other duties and functions as are required by the provisions of the Ordinance, and administration and interpretation of the Zoning Ordinance.

Mr. Hart said there was nothing in the Subdivision Ordinance that dealt with there being a separate determination procedure from the BZA or that the Director had any responsibility for the buildability issue. He said the Subdivision Ordinance makes it unlawful for the Clerk to do certain things, but does not go further.

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

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~ ~ ~ March 18, 2003, (Tape 1), Scheduled case of:

9:30 A.M. (COALITION FOR RURAL CONSERVATION, INC.), CRC, INC., LINDA CLARY AND MARY JANE MCWILLIAMS, A 2002-SP-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the changes in the use of property located at Tax Map 86-4 ((1)) 15 in the C-5 District do not constitute the establishment of a service station use and, therefore, do not require special exception approval. 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. (admin moved from 2/18/03 due to inclement weather)

~ ~ ~ March 18, 2003, (COALITION FOR RURAL CONSERVATION, INC.), CRC, INC., LINDA CLARY AND MARY JANE MCWILLIAMS, A 2002-SP-040, continued from Page 321

Chairman DiGiulian made a disclosure regarding the appeal application, stating that his office prepared the site plan which was the subject of the appeal, and therefore, recused himself from the hearing.

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The meeting recessed at 10:20 a.m. and reconvened at 10:40 a.m.

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Vice Chairman Ribble stated that the Board would address the After Agenda Items prior to the last scheduled case.

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~ ~ ~ March 18, 2003, (Tapes 1 and 2), After Agenda Item:

Consideration of Acceptance  
Application for Appeal submitted by Forrest J. Hatcher

Vice Chairman Ribble stated that a memorandum from the Zoning Administrator stated that the appeal had not been filed in a timely manner.

Mr. Hatcher stated that he had not received prior notice stating when he could appeal and that he had submitted his application two weeks after the required deadline stated in the original letter. Mr. Hatcher stated that it was an important item and requested the Board to accept the application. He stated that the structure which was the subject of the appeal application was the same since it was built in 1963.

Mike Adams, Zoning Administration Division, stated that the appeal was regarding a Notice of Violation dated January 10, 2003, regarding an attached garage which had been converted to a second dwelling unit which was currently occupied. Mr. Adams stated that the appeal should have been filed within 30 days of the Notice of Violation. He stated that Mr. Hatcher filed his appeal on February 24, 2003, 14 days after the deadline, and therefore, did not satisfy the requirements of timely filing.

Mr. Hart questioned Mr. Hatcher about the date of his letter referencing January 27, 2003, stating that it did not make sense that he wrote a letter prior to picking up the letter he was responding to. Mr. Hatcher stated that he knew he would eventually have to present this item to the Board and therefore had prepared his letter. He stated that he did not realize the County would send the item registered mail nor did he realize he would only have 30 days to respond to the violation.

Mr. Adams stated that Mr. Hatcher signed for his letter on January 23, 2003, which would make February 21, 2003, the end of the 30-day timeframe.

Mr. Hammack made a motion to deny the consideration of acceptance for an appeal by Forrest Hatcher. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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~ ~ ~ March 18, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
Richard H. Rice, Jr., VC 00-V-049

Mr. Pammel moved to approve six months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote. The new expiration date was July 18, 2003.

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~ ~ ~ March 18, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
Chesapeake Healthcare Corporation, VC 00-H-027

Mr. Pammel moved to approve 24 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote. The new expiration date was December 13, 2004.

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~ ~ ~ March 18, 2003, (Tape 2), After Agenda Item:

Approval of March 11, 2003 Resolutions

Mr. Pammel moved to approve the March 11, 2003 Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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~ ~ ~ March 18, 2003, (Tape 2), After Agenda Item:

Request for Intent to Defer  
Lakeside Inn of Reston, Inc., D/B/A Il Cigno Ristorante, A 2001-HM-021

Mr. Pammel stated that the appellant noted in their request that the hearing may not be necessary if full compliance was achieved.

Charles Sickles, agent for the appellant, stated that the deferral request was based on the fact that the appeal would either become completely moot or it would be resolved in another fashion. Mr. Sickles requested a deferral until June in order to resolve issues with the Lake Anne Association. He stated that when checking on the building permit, the request had gone through all necessary channels and was currently at the Zoning level. Mr. Sickles stated that the structure was taken down in December and would not be re-erected in the form in which the issue arose.

Mr. Shoup stated that staff did not concur with the request. He stated that there was a second appeal pertaining to the same property, which was scheduled for a different date. He stated that the other appeal dealt with the fact that the tent was erected without obtaining development plan approval, which in turn meant the tent was not in conformance with the original zoning. He stated that staff had been working with Mr. Sickles in hopes of filing a development plan amendment to resolve the issue; however, an application had not been submitted to date to get approval for the tent. Mr. Shoup stated that a building permit could not be issued until a development plan amendment was approved, and that while a building permit had been submitted, it could not proceed because Zoning approval was needed prior to its issuance. Mr. Shoup stated that everything seemed to be in a stalemate and staff did not see it being resolved anytime soon and, therefore, hoped to see the appeal move forward.

Mr. Sickles stated that if staff had concerns, perhaps it could be put on the same agenda with the other appeal and both could be resolved at the same time.

Mr. Hammack moved to approve the Intent to Defer to June 3, 2003, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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~ ~ ~ March 18, 2003, (Tapes 2 and 3), Scheduled case of:

9:30 A.M. (COALITION FOR RURAL CONSERVATION, INC.), CRC, INC., LINDA CLARY AND MARY JANE MCWILLIAMS, A 2002-SP-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the changes in the use of property located at Tax Map 86-4 ((1)) 15 in the C-5 District do not constitute the establishment of a service station use and, therefore, do not require special exception approval. 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. (admin

~ ~ ~ March 18, 2003, (COALITION FOR RURAL CONSERVATION, INC.), CRC, INC., LINDA CLARY AND MARY JANE MCWILLIAMS, A 2002-SP-040, continued from Page 323

moved from 2/18/03 due to inclement weather)

Vice Chairman Ribble asked for a show of hands to determine how many people were present to speak to the issue of appeal. He noted that approximately 25 people wished to speak.

Mr. Hammack moved, given the number of speakers present, to limit the speakers to two minutes each for individual comments and asked that each person attempt to testify to something new dealing with the issues of standing and the procedures involved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

Mr. Hammack also proposed to the Board that the speakers speak on the issue of standing first, so the Board could get their testimony in a definable order so the Board could carry that forward to give all parties the opportunity to address the standing issue with more specificity. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

William Arnold, agent representing the appellants, stated that the speakers might or might not appreciate which of their comments were addressed to standing as opposed to other issues. He stated that they had not been advised or organized in that regard. He asked the Board to inform the speakers as to exactly which of the factual issues would be considered in regard to standing so they could be sure to state their views in that regard.

Ken Sanders, agent representing the owner and operator of the subject property, stated that there were jurisdictional issues ahead of the standing issue which was reflected in the staff's position, the County Attorney's position, as well as the owner's position. He stated that the record reflected issuance of a site plan and building permits approximately two years prior showing constructed improvements which gave rise to the appeal. Mr. Sanders stated that the appeal itself was barred by statutory provisions and he wanted the opportunity to state what those were with regard to approval of the site plan, approval of the building permit in June of 2001, and that the owner and operator relied on the permit and constructed the improvements. He stated that the Statute of Virginia stated that you must object to the approval of the site plan, appeal the approval of the site plan, object to an appeal of the approval of the building permit or file a suit within 15 days of commencement of construction. He stated that all of this information was within the staff report; however, was not focused on. Mr. Sanders stated that those decisions could not be reversed, and it was too late for the Board to have jurisdiction under the laws of Virginia.

Mr. Arnold stated that it was the appellants' position that the letter to the Zoning Administrator and what was being appealed was a request of the determination as to the existing use of the property. Mr. Arnold stated that as a victim of its own success, the subject property had evolved to the point where it was no longer what it was in 1983, where the Board determined it was a general store. Mr. Arnold stated that today it was a service station, regardless of approved building permits and site plans. He stated that most of the improvements on the site were not reflected on the site plan, noting that most of the improvements were built first, with approval requested later.

Mr. Sanders stated that the issue deserved a determination by the Board in case there were later proceedings in this matter, stating that the property owner had a right to establish these facts now or the rest of the case was moot.

Mr. Hammack withdrew his motion, stating that the Board's rules allowed individuals to speak to the issue of standing or the issue of the laws raised by Mr. Sanders. He stated that considering the speakers were not organized to speak on standing and probably did not know what standing was, he suggested that the speakers speak in support or opposition of the application and then the Board could make their decision at the end. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the hearing.

Jayne Collins, Zoning Administration Division, made staff's presentation as outlined in the staff report. She stated that the appeal was concerning a determination of the Zoning Administrator set forth in an October 17, 2002, letter regarding a business operating at 7600 Clifton Road, Davis Store. She stated that the appellants were challenging the Zoning Administrator's determination that recent and proposed changes to the subject

~ ~ ~ March 18, 2003, (COALITION FOR RURAL CONSERVATION, INC.), CRC, INC., LINDA CLARY AND MARY JANE MCWILLIAMS, A 2002-SP-040, continued from Page 324

property did not constitute a service station use, which were consistent with two previous Board of Zoning Appeals rulings and, therefore, did not require special exception approval by the Board of Supervisors. Ms. Collins stated that the issues before the Board in this appeal were whether there was a statutory prohibition against a party challenging improvements on the subject property long after their construction, noting that the improvements in question were authorized by the approval of a site plan on February 7, 2001, and building permit approval for the construction of a canopy on June 4, 2001. She stated that there was a requirement for notification of adjoining property owners when a site plan was submitted, noting that the Department of Public Works (DPWES) had indicated that the requirement was satisfied in this case. She noted that no appeals of the site plan or building permit approval were ever filed. In reliance of those approvals, she stated that work was commenced on the gasoline pump islands and the canopy. Ms. Collins referred to Section 15.2-2213 of the Code of Virginia which provided that when a building permit had been issued, a person who had no actual notice of the issuance of the permit could file suit within 15 days after the start of construction to try and prevent or restrain the construction authorized by the building permit. She said no suit was ever filed after construction began on the pump islands and the canopy, and the work was eventually completed. Ms. Collins stated that the appellants failed to demonstrate how they would be qualified as aggrieved parties. She stated that although individual members of CRC might own property near Davis Store, they admitted through their attorney that they did not own any property and nothing had been presented to demonstrate that CRC had a direct interest in the decision at issue. She stated that Ms. Linda Clary lived approximately two miles away from the subject property and appellant Mary Jane McWilliams owned property in Burke and did not own property anywhere near the subject property. Ms. Collins stated that based on the BZA's decision in 1983 and 1994 that special exception approval was not needed for the uses on the property, there was no basis to currently deem the uses on the same property to be a service station requiring the approval of a special exception. Ms. Collins stated that in the early 1980's, the existing gasoline pumps were replaced and relocated, noting that at that time it was staff's position that the uses on the property constituted a combination quick service food store and service station, while the Zoning Administrator determined that replacement and relocation of the gas pumps constituted an enlargement of the use which required special exception approval. Ms. Collins stated that the determination was appealed and the Board of Zoning Appeals overturned the Zoning Administrator. On April 11, 1994, a Notice of Violation was issued to the owners for operating a truck rental establishment, which was not permitted at that time, also citing the owners for adding storage and display areas in structures associated with the retail sale of plant, mulch and other related items. Ms. Collins stated that at that time staff determined that the expanded business activities and additions constituted an enlargement of the quick service food store and service station use and that special exception approval, as well as site plan, building permit and non-residential use permit approval were required. She stated that the BZA again overturned the Zoning Administrator's determination. Ms. Collins stated that relying on the decisions of the BZA in 1983 and 1994; the activities at Davis Store had been deemed to constitute a retail sales use with associated gasoline sales and thus a use that was permitted by-right on the subject property.

Mr. Hart reviewed the chronology of the building permit and site plan in 2001 and the fact that neither were appealed.

Mr. Arnold stated that he was retained by the appellants to show that the use was a service station. Mr. Arnold presented several photographs to the Board showing service station uses in the area as well as photographs of the subject application at night. He stated that there were several persons present which would testify that their property values had been affected since the service station use had expanded. Mr. Arnold stated that the appellants were not asking for the canopy to come down or the gas tanks to be removed, but that the use be referred to as a service station. Mr. Arnold presented photographs comparing the originally approved canopy to the canopy that currently existed. He also presented a site plan to the Board which showed the use then and the current use, noting that the changes over time had been more than just improvements, but expansion and intensification that would require special exception approval. Mr. Arnold reviewed the 1994 Board's approval noting that the site plan was not approved until 2001. He stated that the 1994 approval was for an office trailer, concrete pad, cargo trailers, plant shade structures, enlargement in the area for parking in gravel, the increase in the size of tanks, which he said meant more traffic, the increase in number of pumps and that all of these items added up to a different end result which currently established a service station.

Mr. Hart questioned why an appeal was not filed after the issuance of a Non-RUP, after the Zoning Administrator's determination. Mr. Arnold stated that no notice was given to anyone upon the issuance of a

~ ~ ~ March 18, 2003, (COALITION FOR RURAL CONSERVATION, INC.), CRC, INC., LINDA CLARY AND MARY JANE MCWILLIAMS, A 2002-SP-040, continued from Page 325

Non-RUP, except the owner.

Vice Chairman Ribble called for speakers. The following speakers came forward. While they spoke, an overhead photo presentation was also given.

Jack Herrity (no address given); David Schnare, Chairman Occoquan Watershed Coalition (no address given); Carl Smadlin, (no address given); Wilhelmina Rueben-Cooke, 11212 Hunting Horse Drive; Haans Fischer, 7321 Wolf Run Shoals Run Road; Stuart Stout, 7109 Swift Run Trails Drive; Patsy Dupree, 7330 Wolf Run Shoals Road; Eleanor Hurt, 7100 Swift Run Trails Drive; Coleen Haun, 7111 White Ridge Lane; Sherry Spink, lived on Henderson Road until July 2002; Cher Olvol, Fairfax Station; Ted Muelhaulp, 11213 Silverleaf; Mat Clary, Henderson Road; Linda Clary, Henderson Road; Jane McWilliams, 11626 Henderson Road; Jim McWilliams, White Ridge Lane; Ruth Sarrantino, 7126 Swift Run Trails Drive; Eric Taylor, 7128 Swift Run Trails Drive; Joseph Larry Dowdy, 7401 Craftown Road; Edie Clark, 11930 Henderson Road; Jack Weaver, 7200 Wolf Run Shoals Road; Millicent Weaver, 7200 Wolf Run Shoals Road; Gayle (inaudible), a Realtor.

They expressed the following concerns:

The area was down-zoned to preserve the semi-rural nature of the area and to protect the Occoquan Watershed; jurisdiction and standing must be dealt with because the Board represented a quasi-judicial role, not serving as a legislative action in this case because if it went to Circuit Court for further review, each issue would have to be dealt with; the question before the Board was if the decision of the Zoning Administrator was accurate; concern about land issues in a down-zoned area; concern about harm to well water; the area was intended to be low density development; the former Davis General Store was now considered the Crump Shell Station; the use should not be large enough to attract outside from the neighborhood; the use was no longer a country store; approved site plans must include such additional information as may be required by other County agencies such as the Fire Marshall and the Water Authority; both the Fire Marshall and the Health Department required underground fuel tanks be shown on the approved site plan as they were considered both structures and additions; were something to happen to the fuel tanks, it would cause a disaster to many homes within the area with underground well water supplies; the road is a Virginia Byway and they would like to keep its integrity; the station was capable of pumping eight vehicles at one time; the store in 1983 was a classic general store selling items that would reflect the character of the neighborhood; currently it sold everything a service station or 7-11 would sell; no other structures had been constructed on the property prior to the purchase by the Crump family; neon lights had obliterated the peace and beauty that used to exist in the neighborhood; homes values had decreased; the environment was currently not safe; each canopy was 18 feet high with 16-foot high-intensity lights; the canopy encroached 22 ½ feet into the 40 foot setback on Clifton Road, which was designated a scenic byway; there were 11 separate signs that advertised Shell; there were underground storage tanks with a total capacity of 30,000 to 32,000 gallons; more than half the lot was covered by gravel and asphalt; there had been a 300% increase in use since 1983; the canopy expanded over 28 feet, over 50 times its original size; the homeowners were upset because they did not know of the changes prior to them being made; the community had always responded to public notice to maintain the nature of the community; no site plan or health department approvals were obtained prior to construction of the new canopy; there had been substantial grading and filling done on the property; by comparing the special exception plat, the rough grading plan, and 1996 site plan, it was apparent that most of the site work, including grading, paving, and graveling were done without approval; there was avoidance of stormwater management issues; extensive grading was done outside of the limits of the approved grading plan; the property was used for a U-haul storage facility; there was garaging of commercial vehicles to include large trucks from a tree trimming service; there was no approval of any underground storage tanks on any of the approved site plans, therefore it was not built in accordance with the approved site plan.

Ray Gaylor, 11821 Lakewood Lane, previous owner of the Davis General store, came to the podium to speak in support of the appeal application. He stated that the use had not changed since he owned it from 1985 to 1988. Mr. Gaylor stated that basically the same items were currently sold at the store that had been sold then. Mr. Gaylor noted that Mrs. Davis who was one of the original owners was in the audience but unfortunately was not able to approach the podium to speak; however, he stated that she was the most affected person in the area and she supported the store the way it was. Mr. Gaylor asked the Board to deny the appeal.

~ ~ ~ March 18, 2003, (COALITION FOR RURAL CONSERVATION, INC.), CRC, INC., LINDA CLARY AND MARY JANE MCWILLIAMS, A 2002-SP-040, continued from Page 326

Mr. Sanders stated that the property was zoned C-5 which meant the owner could sell anything at retail he wanted. He stated that the owner could have a 20,000 square foot building covered with lights as long as it met the Lighting Ordinance, and that it could be covered with signs as long as it was approved under the Sign Ordinance, and made entirely of glass and chrome if that was what the owner desired in the C-5 District. Mr. Sanders gave a detailed history of what Mr. Crump had done to the property, noting that the store was nicer and cleaner and stated that the Board should rely on the Statutes of Virginia and the approvals of the plans when making its decision.

Mr. Arnold responded by stating that the appellants believed that they had shown that there was standing and that the appeal had been properly and timely filed. He stated that the use was currently a service station and asked that the appeal be granted.

Jayne Collins stated that most of the structures and uses on the site currently were there at the time the BZA ruled in 1994, and that what was essentially different was the enlarged canopy which was approximately the same size as the plant shade structure, which the BZA allowed in 1994. She noted that the BZA had twice ruled that the uses on the property were not a quick service food store and service station and in reliance on those two BZA rulings, the owner had proceeded to develop their property in accordance with the proper site plan, building permit, and Non-Residential Use Permit approvals.

Mr. Shoup stated that the uses were permitted by-right on that C-5 piece of property, and therefore, nonconforming uses were not relevant. He noted that the Code provisions provided that any written notice of the zoning violation or written order of the Zoning Administrator would include a statement informing the recipient of appeal rights and stated that the issuance of a Non-RUP was not a written order, or a Notice of Violation, so appeal provisions did not apply. He noted that staff did not believe that the appellants should be considered aggrieved parties in this case.

Mr. Hammack and Mr. Shoup discussed the BZA's previous rulings for clarification on how staff made a determination as what to appeal to the Board.

Patrick Taves, Assistant County Attorney, stated that the situation before the Board was a C-5 zoned property and BZA previous determinations of its uses. He noted that the General Assembly had decided for those people who might not have had actual knowledge of the permits, they could go forward and file suit to stop construction activities; however, that was not done, and so years later, the appellant's file this appeal, which should be considered untimely.

Mr. Hart moved to uphold the determination of the Zoning Administrator. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the hearing.

The Board discussed in detail their reasons and concerns regarding the appeal issues. Mr. Hart noted that there had been no showing that the Zoning Administrator did anything wrong and that all the issues should have been raised whether the scheme was fair or not, and it was too late for the appeal to have been filed.

Mr. Pammel supported the motion, noting that the law before the Board was very clear, that absent appeal, the Board had little leeway other than to make a finding against the appellant and to uphold the decision of the Zoning Administrator.

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As there was no other business to come before the Board, the meeting was adjourned at 1:40 a.m.

Minutes by: Deborah A. Hedrick

Approved on: September 28, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 25, 2003. 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

~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KHAN INTERNATIONAL, LLC, SP 2002-MV-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit building to remain 10.0 ft. from rear lot line. Located at 9308 Gunston Cove Rd. on approx. 34,578 sq. ft. of land zoned C-5. Mt. Vernon District. Tax Map 107-4 ((1)) 11A. (Admin moved from 11/12/02 per appl. Req) (Cont'd from 3/4/03)

Peter Braham, Rezoning and Special Exception Branch, explained that on March 4, 2003, the Board deferred the application until after the Board of Supervisors (BOS) heard the application.

Mr. Hart asked staff what was the outcome of the BOS meeting. Mr. Braham replied the BOS deferred decision on the application until April 28, 2003, to allow the applicant and members of the Lorton Federation to work out several issues.

Mr. Hammack moved to defer decision on SP 2002-MV-032 to March 29, 2003, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN R. BAUMGART, VC 2003-BR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from side lot line. Located at 5312 Richardson Dr. on approx. 15,210 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 78-1 ((3)) 580

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 Baumgart, 5312 Richardson Drive, Fairfax, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, 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 5.7 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet; therefore, a variance of 2.3 feet was requested.

Mr. Baumgart presented the variance request as outlined in the statement of justification submitted with the application. He stated that the orientation of the dwelling on the property required the need for the variance. He submitted a photograph illustrating the location of the dwelling on the property.

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

Mr. Pammel moved to approve VC 2003-BR-003 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN R. BAUMGART, VC 2003-BR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from side lot line. Located at 5312 Richardson Dr. on approx. 15,210 sq. ft. of

~ ~ ~ March 25, 2003, JOHN R. BAUMGART, VC 2003-BR-003, continued from Page 329

land zoned R-2 (Cluster). Braddock District. Tax Map 78-1 ((3)) 580. 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 25, 2003; 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 unusual orientation of the structure on the lot causes the need for the variance.
4. As reflected in the photographs, the lot has 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 the addition shown on the plat prepared by George M. O'Quinn of Dominion Surveyors, Inc., dated November 5, 2002 as revised through December 21, 2002, submitted with this application and is not transferable to other land.

--- March 25, 2003, JOHN R. BAUMGART, VC 2003-BR-003, continued from Page 330

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 April 2, 2003. This date shall be deemed to be the final approval date of this variance.

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--- March 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN W. AND JOYCE W. KELLEY, VC 2003-SP-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 2.7 ft from rear lot line. Located at 9063 Blarney Stone Dr. on approx. 1,851 sq. ft. of land zoned R-5. Springfield District. Tax Map 88-2 ((13)) (3) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Kelley, 9063 Blarney Stone Drive, Springfield, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, 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 2.7 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 8.0 feet; therefore, a variance of 5.3 feet was requested.

Mr. Kelley presented the variance request as outlined in the statement of justification submitted with the application. He submitted a photograph of the dwelling illustrating the location of the current deck on the property. He stated the deck was over twenty years old and needed to be replaced. He said there was no negative impact on the surrounding properties and he had full neighborhood support.

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

Mr. Hart moved to approve VC 2003-SP-005 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN W. AND JOYCE W. KELLEY, VC 2003-SP-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 2.7 ft from rear lot line. Located at 9063 Blarney Stone Dr. on approx. 1,851 sq. ft. of land zoned R-5. Springfield District. Tax Map 88-2 ((13)) (3) 7. 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

--- March 25, 2003, JOHN W. AND JOYCE W. KELLEY, VC 2003-SP-005, continued from Page 331

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 25, 2003; 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 small and unusually configured for a townhouse with an "L" shape, leaving little useable area.
4. The configuration of the townhouse and lot is odd. The open area is in an isolated corner.
5. There will be no impact because the addition is against a solid brick wall with no windows.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Guy H. Briggs of Apex Surveys, dated March 17, 1994 as revised through April 20, 1994, 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

~ ~ ~ March 25, 2003, JOHN W. AND JOYCE W. KELLEY, VC 2003-SP-005, continued from Page 332

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 2, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP L. SOUCY, VC 2003-SP-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.9 ft. from front lot line. Located at 6115 Garden Rd. on approx. 32,360 sq. ft. of land zoned R-1. Springfield District. Tax Map 79-3 ((7)) 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. Philip Soucy, 6115 Garden Road, Springfield, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, 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 23.9 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, a variance of 16.1 feet was requested.

Mr. Soucy presented the variance request as outlined in the statement of justification submitted with the application. He submitted photographs of the property illustrating the area of the proposed garage addition. He stated that the orientation of the home on the lot required the need for a variance. He said the garage would be in character with the existing dwelling.

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

Mr. Ribble moved to approve VC 2003-SP-011 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIP L. SOUCY, VC 2003-SP-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.9 ft. from front lot line. Located at 6115 Garden Rd. on approx. 32,360 sq. ft. of land zoned R-1. Springfield District. Tax Map 79-3 ((7)) 1. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 25, 2003; 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 shape of the lot and the placement of the house on the lot cause the need for a variance.

~ ~ ~ March 25, 2003, PHILIP L. SOUCY, VC 2003-SP-011, continued from Page 333

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Guy H. Briggs of Apex Surveys, dated October 15, 2002 as revised through December 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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LAMBROS AND JAYNE MAGIAFAS, VC 2003-MA-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots and one outlot with proposed Lots 2 and 3 having lot widths of 12.0 ft. Located at 4504 Carrico Dr. on approx. 37,224 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 71-1 ((5)) 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. Stephen Fox, agent, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a lot width variance to permit the subdivision of one lot into three lots and one outlot with proposed Lots 2 and 3 having lot widths of 12 feet. The Zoning Ordinance requires a minimum lot width of 70 feet. The proposal would create two additional lots for single family detached homes with resulting lot sizes of approximately 11,562 square feet for Lot 1, 10,106 square feet for Lot 2 and 11,834 square feet for Lot 3. Two of the lots would access Carrico Drive via a pipestem driveway. Proposed Lot 1 would access Carrico Drive directly. Staff was concerned that the development pattern of lots accessing public streets from pipestem driveways could be repeated within the existing neighborhood which would not be consistent or harmonious with the surrounding community. The property could be subdivided into two lots without a variance.

Mr. Fox presented the variance request as outlined in the statement of justification submitted with the application. He stated that Carrico Drive had already undergone some development and the proposed application would mimic the previous development. He stated that the application met several of the hardship standards and submitted Exhibits illustrating the shallowness of the lots. Mr. Fox suggested that the construction of a cul-de-sac in the area would be less environmentally sensitive than what was proposed. He said the proposal was consistent with the neighborhood development, provided less impervious area and provided more tree save opportunities.

Ms. Gibb asked how Lot 15 was different from Lots 16, 17, and 18. Mr. Fox explained that Lots 17 and 15 were similar; however, there was opportunity for major consolidations with regard to Lots 16 and 18. Ms. Gibb asked for clarification as to which direction the proposed homes would face. Mr. Fox replied they would face the side of Lots 2, 3, and 13.

Mr. Hart asked staff for clarification of whether or not the applicants could subdivide the property into two lots and not require a variance. Ms. Stanfield replied that was correct.

Mr. Hammack asked the applicant if a cul-de-sac could be constructed. Mr. Fox replied that was correct however, it would create more impervious area than a pipestem design.

Chairman DiGiulian called for speakers.

Dawn Volk, 4505 Carrico Drive, came forward to speak in opposition. She said she purchased her property on the dead end street for the semi-protected low density area. She stated that she understood development and growth but was in favor of smart growth. She stated the proposed development would not be compatible with the surrounding area. She said the neighborhood just underwent some intensive development at the end of the street resulting in four additional homes. She stated that the street had no curb, gutter or sidewalk and more development would alter the presence of the road.

Suzanne Philips, (no address given for the record), came forward to speak in opposition. She stated she lived to the north of the proposed development. She said the proposed application would change the enjoyment of the neighborhood. She said the road was designed for low traffic volume and the new development would add to the traffic on the road. She said she had drainage concerns and suggested the application was geared more for profit than for the neighborhood.

Mr. Fox, in his rebuttal, stated that the R-4 zoned neighborhoods were not defined as low density areas. He reiterated that the proposal would be consistent with the character of the neighborhood. He stated that drainage would not be an issue.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to deny VC 2003-MA-002 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAMBROS AND JAYNE MAGIAFAS, VC 2003-MA-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots and one outlot with proposed Lots 2 and 3 having lot widths of 12.0 ft. Located at 4504 Carrico Dr. on approx. 37,224 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 71-1 ((5)) 15. 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 25, 2003; 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 met the required standards for a variance.
3. Lot 15 is not different from Lots 12, 16, 17, 18, and some other lots on the street resulting in the applicant not meeting the standard that undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
4. The applicant can divide the property by right and have 2 houses which would be more consistent with the neighborhood.
5. Having the pipestem and the driveways will not make the properties more environmentally sensitive.

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.



~ ~ ~ March 25, 2003, LAMBROS AND JAYNE MAGIAFAS, VC 2003-MA-002, continued from Page 336

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 April 2, 2003.

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT E. L. AND ANA MARIA DAVIS, SP 2003-LE-001 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. and eave 2.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 6400 Julian St. on approx. 17,108 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3)) (41) 1. (Concurrent with VC 2003-LE-007).

9:00 A.M. ROBERT E. L. AND ANA MARIA DAVIS, VC 2003-LE-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.1 ft. from side lot line. Located at 6400 Julian St. on approx. 17,108 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3)) (41) 1. (Concurrent with SP 2003-LE-001).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Davis, 6400 Julian Street, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior 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 shed to remain 2.9 feet with an eave 2.3 feet from a side lot line and to permit a 4.5 foot high fence to remain in a front yard. The Zoning Ordinance requires a minimum side yard of 12 feet, and eaves are permitted to extend 3.0 feet; therefore, modifications of 9.1 feet for the building and 6.7 feet for the eave were requested. The Zoning Ordinance requires a maximum fence height of 4.0 feet in a front yard; therefore, a modification of .5 feet was requested for the fence.

The applicants also requested a variance to permit the construction of a carport addition to be located 3.1 feet from a side lot line. The Zoning Ordinance permits extension of 5.0 feet for carports in a side yard; therefore, the minimum yard required was 7.0 feet. A variance of 3.9 feet was requested.

Mr. Davis presented the requests as outlined in the statements of justification submitted with the applications. He stated that he contacted the County before he constructed the shed, approximately nine years prior, and he was told a building permit was not needed for a shed that size. He explained that the shed was moved up from its original position because of the slope of the property. Mr. Davis stated that his wife had arthritis and needed an oversized carport to provide for wheelchair access if necessary and to compensate for an air conditioning unit which was located on the driveway side of the home.

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

Mr. Hammack moved to approve SP 2003-LE-001 for the reasons noted in the Resolution.

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~ ~ ~ March 25, 2003, ROBERT E. L. AND ANA MARIA DAVIS, SP 2003-LE-001 and VC 2003-LE-007, continued from Page 337

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT E. L. AND ANA MARIA DAVIS, SP 2003-LE-001 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. and eave 2.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 6400 Julian St. on approx. 17,108 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3)) (41) 1. (Concurrent with VC 2003-LE-007). 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 25, 2003; and

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

1. The application is approved to the extent that the fence is shown on the property.

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:

~ ~ ~ March 25, 2003, ROBERT E. L. AND ANA MARIA DAVIS, SP 2003-LE-001 and VC 2003-LE-007, continued from Page 338

1. This Special Permit is approved for the location of an accessory structure and a fence, as shown on the plat prepared by Bryant L. Robinson, dated August 30, 2002, as revised through October 11, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 2003. 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 2003-LE-007 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. L. AND ANA MARIA DAVIS, VC 2003-LE-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.1 ft. from side lot line. Located at 6400 Julian St. on approx. 17,108 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((3)) (41) 1. (Concurrent with SP 2003-LE-001). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 25, 2003; 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 placement of the house on the lot causes the need for a variance.
4. The variance is minimal and is only needed for the left rear corner of the addition.
5. The addition 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.

~ ~ ~ March 25, 2003, ROBERT E. L. AND ANA MARIA DAVIS, SP 2003-LE-001 and VC 2003-LE-007, continued from Page 339

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 carport addition, as shown on the plat prepared by Bryant L. Robinson, dated August 30, 2002, as revised through October 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 carport addition shall be architecturally compatible with the existing dwelling.

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

Mr. 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 2, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MANJIT R. BAJWA, M.D., SP 2003-DR-002 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1007 Heather Hill Ct. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-3 ((19)) 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. Jane Kelsey, 4104 Autumn Court, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home professional office consisting of a medical doctor's office. The special permit would be restricted to the hours of 9:30 a.m. to 4:30 p.m. two days a week through

~ ~ ~ March 25, 2003, MANJIT R. BAJWA, M.D., SP 2003-DR-002, continued from Page 340

a period of Monday through Friday. There would be no employees associated with the home professional office. The applicant would be the only practitioner. The home professional office would utilize 950 square feet of the 2,740 square foot home.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. The applicant proposed the office to be functioning two days a week with a maximum of four patients per day for a total of eight patients. Ms. Kelsey informed the Board that the applicant was a doctor of medicine and met the home professional office criteria. She submitted a copy of Ms. Bajwa's medical license. She said the applicant had occupied a new building at 6391 Little River Turnpike and submitted a copy of the Non-Rup and documentation for that location. She explained that the primary office would be at the Little River Turnpike location but the applicant wanted the opportunity to see a few patients in her home. Ms. Kelsey stated that some of the existing patients lived in the area of the applicant's home and looked forward to being able to be seen at the applicant's home as opposed to the office. She stated that the applicant practiced alternative medicine and the appointments and consultations lasted at least 30 minutes for current patients and 1 ½ hours for new patients. Ms. Kelsey submitted a statement signed by eleven neighbors indicating support of the application. She submitted photographs of the adjacent homes surrounding the property in question. She indicated that the applicant's driveway was large so there would be adequate space for the visiting patients to park. She said the traffic impact would be minimal as there would only be sixteen trips per week generated by the use.

Ms. Gibb asked the applicant what type of medicine would be practiced on the site. Ms. Bajwa explained that she practiced nutritional therapy and detoxification. Ms. Gibb asked the applicant if she treated infectious diseases. Ms. Bajwa replied she did not.

Mr. Hart asked the applicant if the proposed site was handicap accessible. Ms. Bajwa replied that the subject property was not handicap accessible and said she would not see any handicapped people on the application site.

Mr. Hart stated that he had looked on the State Board of Medicine website which stated that there was already an office functioning on the application site. Ms. Bajwa explained that she was a member of the American College of Advancement in Medicine and she had filled out papers about her practice based on approval of the special permit; therefore, her practice was listed on their website. Mr. Hart asked the applicant if she had a Fairfax County Business License. Ms. Bajwa replied that she did.

Chairman DiGiulian called for speakers.

Gordon Gomunder, 1004 Heather Hill Court, came forward to speak in opposition. He stated that the proposed application would increase the traffic in the neighborhood. He explained there was an existing day care in the neighborhood that generated a large amount of traffic in the area.

Rebecca Gomunder, 1004 Heather Hill Court, came forward to speak in opposition. She said she was unclear with the type of treatments that would be administered at the application site. She suggested that the applicant had begun seeing patients at her home without special permit approval. She stated that she was uncomfortable with the lack of information regarding exactly what medical procedures would take place on the subject property. She questioned how any hazardous waste generated from certain medical treatments would be disposed of.

Arthur Yan, 1001 Heather Hill Court, came forward to speak in opposition. He said he was opposed to the application because the patients attending the proposed office were strangers to the area and he was concerned for the safety of the children in the community.

Lou Fisher, 1009 Heather Hill Court, came forward to speak. He said he was not in opposition but that he had some concerns. He said he was concerned that the applicant would not follow the development conditions and asked who would enforce those conditions. He questioned whether or not the approval was to the land or to the applicant. Chairman DiGiulian explained that the approval was for the applicant and it would cease if the applicant sold the property. Mr. Fisher stated that he thought the applicant had been seeing patients without special permit approval.

~ ~ ~ March 25, 2003, MANJIT R. BAJWA, M.D., SP 2003-DR-002, continued from Page 341

Angela Proxmeier, 7207 Heather Hill Lane, came forward to speak in opposition. She stated that she was strongly opposed to the proposed use. She said she moved to the area for the privacy and safety for her children. She said the increased traffic would negatively affect the neighborhood.

Ms. Kelsey, in her rebuttal, explained that the only visible impact of the use would be when the patients parked in the driveway. She said there would be a maximum of eight additional cars entering and exiting the neighborhood per day two days a week. She contended there were other by-right uses that would be more intense than what was proposed. She said that she was unable to respond to some of the medical issues that a citizen had raised. She stated there had been three other home professional offices in the prior two years. Ms. Kelsey requested a deferral to discuss some misconceptions that some of the neighbors had.

Mr. Hart asked the applicant where any hazardous waste would be disposed. Ms. Kelsey replied that the applicant would transport any hazardous waste that was generated to her office for disposal. Mr. Hart asked if there would be any vitamin sales on the subject property. Ms. Kelsey replied that the applicant ordered all of the vitamins from a supply company and they were mailed directly to the patients. Mr. Hart asked for clarification on whether the applicant wanted a permanent special permit for a home professional office. Ms. Kelsey replied that was correct.

Mr. Kelley said he didn't think a deferral would do much good because he didn't think the Board needed any further information to make a determination.

Mr. Hart stated that the application did not meet standards 3, 4, and 7 and could not support a home professional office in a congested cul-de-sac.

Ms. Gibb stated that four cars per day was a lot fewer trips per day than a neighbor who had three children that were all driving. She said the proposed use would cause a minimal impact in the neighborhood.

Mr. Kelley moved to deny SP 2003-DR-002 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MANJIT R. BAJWA, M.D., SP 2003-DR-002 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1007 Heather Hill Ct. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-3 ((19)) 14. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 25, 2003; and

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

1. The applicant is the owner of the land.
2. The subdivision is small with 2 cul-de-sacs.
3. Even though traffic is minimal, all the traffic generated would be going through the subdivision.
4. The applicant does not need a home professional office because she owns a clinic 4-5 miles away.

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). 8-907 of the Zoning Ordinance.

~ ~ ~ March 25, 2003, MANJIT R. BAJWA, M.D., SP 2003-DR-002, continued from Page 342

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

Mr. Ribble 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 April 2, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:30 A.M.        CHANTILLY YOUTH ASSOCIATION (CYA), A 2002-SU-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that, in accordance with Sect. 14-903 of the Zoning Ordinance, proposed ball field lighting on subject property located in the R-1 District cannot exceed 0.5 foot candles at the property boundaries. Located at 4000 Stringfellow Rd. on approx. 20.97 ac. of land zoned R-1 and WS. Sully District. Tax Map 45-1 ((1)) 7 pt. (admin moved from 2/11/03).

This case was withdrawn.

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:30 A.M.        WILLIAM J. HILBERS, A 2003-MA-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property was not legally subdivided and is, therefore, not a buildable lot under Zoning Ordinance provisions. Located at 4610 Merritt Rd. on approx. 39,160 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((1)) 29 and 29A. (Cont'd from 3/11/03)

Diane Johnson-Quinn, Zoning Administration Division, explained that staff provided the Board the additional information that they had requested at the March 11, 2003 hearing.

Mr. Pammel asked how lots 14 through 18 related to the properties that were the subject of the appeal. Ms. Quinn replied that she was unable to find records for the subdivision and the twenty acre tract involved the entire tract along Merit Drive including Lot 30. She said the property was very hard to track because there were no maps or legal descriptions to follow. Mr. Pammel asked for clarification that the lots existed prior to the Subdivision Ordinance of 1929. Ms. Quinn replied that was correct. He asked for clarification that the properties that were the subject of the appeal were part of the original twenty acre tract. Ms. Quinn replied that was correct. Mr. Pammel asked how the action of the Board of Supervisors affected Lots 29 and 29A. Ms. Quinn explained that Lots 29 and 29A were not created until 1952 and 1985, and the Board of Supervisors approved the Subdivision Ordinance Amendment which deemed that for lots created after 1947, there was no automatic validation, but there was a process the appellant could go through to validate the lot. Mr. Pammel asked for clarification that the appellant wanted to consolidate Lots 29 and 29A and demolish the existing home on Lot 29. Ms. Quinn replied that was correct.

There was discussion between Ms. Gibb and staff of all of the different cuts of the property that had been made.

Mr. Hart asked staff if Attachment B contained a sketch or a plat. Ms. Johnson-Quinn replied it did not.

There was conversation between the Board, staff and the appellant as to whether the utility building had been converted into a tenant house and if the tenant house was the home on Lot 29.

Mr. Pammel stated that he was not sure that a tenant house was allowed on a lot without a division being required. Ms. Johnson-Quinn stated a case where it might have been a possibility.

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

~ ~ ~ March 25, 2003, WILLIAM J. HILBERS, A 2003-MA-005, continued from Page 343

Ms. Gibb stated that the County owed it to the citizens to do everything possible to find that a property was legal. She said the Board of Supervisors ruled that any lots created prior to September 1, 1947, which were a separate tax map lot that met the Zoning Ordinance, were legal. She said the lots in question were created prior to 1947, and the conveyance which occurred was not a subdivision under the Ordinance because although a 55,332 square foot parcel was created by plat, more than ten acres was left.

Ms. Gibb moved to reverse the determination of the Zoning Administrator regarding A 2003-MA-005.

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

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~ ~ ~ March 25, 2003, (Tape 1), Scheduled case of:

9:30 A.M. PETER W. AND LESLIE L. BERK, A 2002-DR-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination, by the Department of Public Works and Environmental Services, that appellants' property was not legally subdivided. Located at 10616 Good Spring Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 7. (Concurrent with A 2003-DR-008). (Cont'd from 3/11/03)

9:30 A.M. PETER W. AND LESLIE L. BERK, A 2003-DR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property was not legally subdivided and is, therefore, not a buildable lot under the Zoning Ordinance provisions. Located at 10616 Good Spring Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 7. (Concurrent with A 2002-DR-045). (Cont'd from 3/11/03)

Mr. Hart recused himself from the hearing.

William E. Shoup, Deputy Zoning Administrator, explained that staff provided the Board the additional information that they had requested at the March 11, 2003 hearing. He reiterated staff's position that the lot was not lawfully created; therefore, was not a buildable lot under the Zoning Ordinance. He explained that the action made by the Board of Supervisors approving amendments to the Subdivision Ordinance provided a mechanism for the subject property to become legitimized. He stated there was a second amendment to the Subdivision Ordinance to be heard by the Board of Supervisors in April which would automatically validate the subject property as opposed to having to go through a validation process.

Lynne Strobel, agent for the appellants, stated that the appellant was concerned about the amount of time and costs they would incur while going through the validation process. She reminded the Board that there was an existing home on the property in the 1950's, a building permit for an addition was issued in the 1980's and the County had issued a demolition permit to remove the home. She stated that the appellants were not able to make any improvements on the lot at the current time. Ms. Strobel contended that the lot was legally subdivided and requested that the Board reverse the decision of the Zoning Administrator. She introduced Mark Getsman to present additional research regarding the subject property.

Mr. Getsman submitted four deeds and a plat and presented the Board with a history of the property. He said the staff report was missing one deed which was the first conveyance in 1951. He explained that because the intervening cut on the 71 acre tract of land left over ten acres, the land was not considered to be a subdivision.

Mr. Shoup stated that staff was not provided with a copy of the deed that was missing. He explained staff's position that the Subdivision Ordinance mandated that any separation of land into three or more lots or other divisions of land at one time or over an extended period of time was considered a subdivision.

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

Ms. Gibb reiterated that the County should consider that the citizen had purchased the property with the belief that the property was valid to be built on. She stated that the County should lean toward the legality of the lot. She stated building permits were issued on the lot. She said the County should continue to interpret the Ordinances consistently.



~ ~ ~ March 25, 2003, PETER W. AND LESLIE L. BERK, A 2002-DR-045 and A 2003-DR-008, continued from Page 344

Ms. Gibb moved to reverse the decision of the Zoning administrator regarding appeals A 2002-DR-045 and A 2003-DR-008. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ March 25, 2003, After Agenda Item:

Approval of June 4, 2002 and July 2, 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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~ ~ ~ March 25, 2003, After Agenda Item:

Request for reconsideration  
Kyle P. May, M.S.  
VC 2003-MA-006

There was no motion, and the request for reconsideration was denied.

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~ ~ ~ March 25, 2003, After Agenda Item:

Approval of March 18, 2003 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 12: 21 p.m.

Minutes by: Regina Thorn Corbett / Lori M. Mallam

Approved on: September 14, 2004

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
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 1, 2003. The following Board Members were present: Chairman John DiGiulian; Robert Kelley; Nancy Gibb; John Ribble; James Hart; Paul Hammack; and James Pammel.

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.

~ ~ ~ April 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TITI MCNEILL, VC 2003-MA-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard. Located at 7805 Trammell Rd. on approx. 40,674 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((8)) 47A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Titi McNeill, 7805 Trammell Road, Annandale, Virginia, replied that it was.

Lindsey Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a fence 7.0 feet in height in the front yard. A fence of 4.0 feet is permitted in the front yard under the Zoning Ordinance. The applicant recently stated that she sought approval for a fence 6.0 feet in height in the front yard; therefore, a variance of 2.0 feet would be required.

Ms. McNeill presented the variance request as outlined in the statement of justification submitted with the application. She explained that she needed the fence because the next door neighbor had twenty to thirty people over every Sunday. She said it was damaging her yard. She explained that a fence would keep unwanted trespassers off her property.

Ms. Gibb asked the applicant if she wanted an aluminum fence. Ms. McNeill stated that she did.

Ms. Gibb asked the applicant to describe an aluminum fence. Ms. McNeill stated that it would be six feet tall and 75 feet long. She said that the fence posts were half an inch around and an inch to an inch and a half apart.

Ms. Gibb asked the applicant if you could see through the fence. Ms. McNeill stated that you could. She stated that she did not want the fence posts set wider because she did not want children to climb the fence.

Ms. Gibb asked if the fence would connect to anything. Ms. McNeill stated that it would not.

Ms. Gibb asked staff if they knew what an aluminum fence looked like. Ms. Shulenberger stated that she had not seen the proposed fence. She said she thought it was a chain link fence.

Ms. Gibb asked the applicant what color the fence would be. She replied that it would be dark brown.

Mr. Hart asked the applicant if the fence was 100 feet long or 75 feet long. Ms. McNeill stated that the fence was 75 feet of aluminum fence and 25 feet of wood fence.

Mr. Hart asked the applicant if the 25 feet of wood fence was on the plat or in a different location. Ms. McNeill stated that it was on the plat.

Mr. Hart asked staff if 25 feet of the 100 feet was going to be a wood fence. Ms. Shulenberger stated that it was.

Mr. Hart asked staff if anything needed to be changed on the plat or conditions. Ms. Shulenberger stated that the conditions did not address the style of fence so an amendment could be made.

Mr. Hart asked the applicant why a four-foot fence could not stop people from coming into her yard. Ms. McNeill stated that with a six-foot fence people would be less likely to come into her yard because the fence would be starting at her mailbox.

~ ~ ~ April 1, 2003, TITI MCNEILL, VC 2003-MA-012, continued from Page 347

Mr. Hart asked the applicant where the mailbox was located. Ms. McNeill said that it was at the corner of the property where the driveway began.

Mr. Hart asked the applicant if you could see through the fence how it would stop the neighbors from looking at her. Ms. McNeill stated that she did not want garbage and trespassers on her property.

Chairman DiGiulian called for speakers.

Thomas Feraro, 7809 Trammell Road, came forward to speak in opposition to the application. He stated that he was two houses to the right of the applicant's home. He explained that Ms. McNeill had a right to keep trespassers off her property, but a six-foot fence would not be in character with the neighborhood. He said that there were few, if any, fences in the area. Mr. Feraro stated that the applicant currently had a very attractive four-foot fence.

Mr. Pammel asked Mr. Feraro where his house was in relation to the applicant's. Mr. Feraro stated that his house was two houses to the right of the applicant's.

Mr. Pammel asked Mr. Feraro if the property of the Nuns was between his and Ms. McNeill's property. Mr. Feraro said that it was.

Ms. McNeill stated in her rebuttal that it was unusual to have a fence that high. She said that she did not want to construct the fence, but her grass and trees were dead. She said that she did not want to have to pick up garbage anymore.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VC 2003-MA-012 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TITI MCNEILL, VC 2003-MA-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance 7805 Trammell Rd. on approx. 40,674 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((8)) 47A. 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 1, 2003 and

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

1. The applicant is the owner of the land.
2. The 6.0 foot fence would obstruct traffic traveling on Trammell Road eastbound and present a safety issue.
3. There is a concrete sidewalk along Trammell Road that may be obstructed.

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;

~ ~ ~ April 1, 2003, TITI MCNEILL, VC 2003-MA-012, continued from Page 348

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 9, 2003.

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~ ~ ~ April 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        JEAN AND EARL LOCKWOOD, VC 2003-MA-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from rear lot line. Located at 5259 Winterview Dr. on approx. 5,603 sq. ft. of land zoned PDH-4. Mason District. Tax Map 72-3 ((33)) (A1) 383.

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, representative of Patio Enclosures, replied that it was.

William Sherman, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a sunroom enclosure and an existing deck to be located 9.7 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 16 feet; therefore, a variance of 6.3 feet was requested.

Mr. Lenk presented the variance request as outlined in the statement of justification submitted with the application. He said because of the topography, the neighbors to the rear were three stories above the Lockwood's property.

Mr. Hammack asked Mr. Lenk to show which direction the sunroom faced. Mr. Lenk stated that it faced the rear of the house.

~ ~ ~ April 1, 2003, JEAN AND EARL LOCKWOOD, VC 2003-MA-008, continued from Page 349

Mr. Hart asked Mr. Lenk if there was anything extraordinary about the lot compared to the other lots. Mr. Lenk said the unit had a retaining wall because of the topography, and the elevation of the lot was well below the majority of the other units.

Mr. Hart asked Mr. Lenk if there was anything different about the lot compared to the other lots excluding the retaining wall. Mr. Lenk said the projection of the unit was different than the neighbor's unit so it was closer to the retaining wall.

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

Mr. Hammack moved to approve VC 2003-MA-008 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEAN AND EARL LOCKWOOD, VC 2003-MA-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from rear lot line. Located at 5259 Winterview Dr. on approx. 5,603 sq. ft. of land zoned PDH-4. Mason District. Tax Map 72-3 ((33)) (A1) 383. 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 1, 2003; and

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

1. The applicants are the owners of the land.
2. The applicant has satisfied the nine required standards for a variance.
3. Because of the size of the lot, there is no other place to put the enclosure.
4. The enclosure is on an existing deck.
5. The variance will not change the character of the neighborhood or have a direct impact on the houses directly behind 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:

~ ~ ~ April 1, 2003, JEAN AND EARL LOCKWOOD, VC 2003-MA-008, continued from Page 349

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson, dated through January 3, 2003, 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 6-1. Mr. Kelley voted against the motion.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 1, 2003, (Tape 1), Scheduled case of:

- 9:00 A.M. CYNTHIA K. SCHNEIDER, VC 2003-LE-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.0 ft. from side lot line and 4.0 ft. from rear lot line. Located at 5430 Castle Bar La. on approx. 4,296 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (43) 1. (Concurrent with SP 2003-LE-004).
- 9:00 A.M. CYNTHIA K. SCHNEIDER & RAYMOND M. KELLY, SP 2003-LE-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.5 ft. from rear lot line and 1.0 ft. from side lot line. Located at 5430 Castle Bar La. on approx. 4,296 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (43) 1. (Concurrent with VC 2003-LE-010).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Raymond M. Kelly, 5430 Castle Bar Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report.

~ ~ ~ April 1, 2003, CYNTHIA K. SCHNEIDER, VC 2003-LE-010, and CYNTHIA K. SCHNEIDER & RAYMOND M. KELLY, SP 2003-LE-004, continued from Page 351

The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 0.5 feet from the rear lot line and 1.0 foot from the side lot line. The minimum required yard is 6.0 feet for the rear and 2.8 feet for the side; therefore, modifications of 4.5 feet for the rear yard and 1.8 feet for the side yard were required. Additionally, the applicant sought a variance to permit an addition consisting of a screened deck to be located 1.0 foot from a side lot line and 4.0 feet from a rear lot line. The side and rear yard requirements are 8.0 feet and 25 feet; therefore, variances of 7.0 feet for the side yard and 21 feet for the rear yard were requested.

Mr. Kelly presented the variance request as outlined in the statement of justification submitted with the application. He explained that when the residence was purchased, they were unaware that they were in violation. He said that there were two other screened in decks like the one being proposed in the neighborhood. He said they had no neighbors to the rear and nothing to the left of the lot. He stated that there was a walking trail behind the property.

Mr. Hammack asked if the deck was built prior to them purchasing the property. Mr. Kelly stated that it was.

Mr. Hammack asked what section of the deck would be enclosed. Mr. Kelly stated that they would enclose a 20 by 8.0 foot section of the deck.

Mr. Hart asked if the left rear corner of the deck would be squared. Mr. Kelly stated that it would.

Mr. Hart asked if the 1.0 foot would be to the new corner or where the existing deck was currently. Mr. Kelly stated that it would be where the existing deck was.

Mr. Hart asked if the enclosure would only be on the second level. Mr. Kelly stated that it was.

Mr. Hart asked if you could walk under the deck. Mr. Kelly stated that you could.

Mr. Hart asked if the path in the photographs was a bicycle path. Mr. Kelly stated that it was for biking and walking.

Mr. Hart asked if the lot to the rear was the Association's. Mr. Kelly stated that it was.

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

Mr. Hart moved to approve SP 2003-LE-004 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CYNTHIA K. SCHNEIDER & RAYMOND M. KELLY, SP 2003-LE-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.5 ft. from rear lot line and 1.0 ft. from side lot line. Located at 5430 Castle Bar La. on approx. 4,296 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (43) 1. (Concurrent with VC 2003-LE-010). 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 1, 2003; and

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



~ ~ ~ April 1, 2003, CYNTHIA K. SCHNEIDER, VC 2003-LE-010, and CYNTHIA K. SCHNEIDER & RAYMOND M. KELLY, SP 2003-LE-004, continued from Page 352

1. The applicants are the owners of the land.
2. The deck was built by the builder of the home before the applicants bought the property.
3. There would not be a significant impact on neighbors for the deck to remain.
4. The structure is open at ground level to permit walk through for maintenance or other purposes.
5. The back yard is shallow and it would be a hardship for the applicants to move the deck.

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 Brian W. Smith, dated August 20, 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 April 9, 2003. 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 2002-LE-010 for the reasons noted in the Resolution.

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~ ~ ~ April 1, 2003, CYNTHIA K. SCHNEIDER, VC 2003-LE-010, and CYNTHIA K. SCHNEIDER & RAYMOND M. KELLY, SP 2003-LE-004, continued from Page 353

**COUNTY OF FAIRFAX, VIRGINIA**

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

CYNTHIA K. SCHNEIDER, VC 2003-LE-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.0 ft. from side lot line and 4.0 ft. from rear lot line. Located at 5430 Castle Bar La. on approx. 4,296 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (43) 1. (Concurrent with SP 2003-LE-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 1, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the standards for a variance.
3. The configuration of the lot and the back yard is shallow, not rectangular.
4. The shape and size of the lot creates problems for expansion.
5. The variance is for an enclosure on an existing deck.
6. There would not be a significant impact on neighbors; the deck backs up to open space.
7. The enclosure of the deck will not violate any of the 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

~ ~ ~ April 1, 2003, CYNTHIA K. SCHNEIDER, VC 2003-LE-010, and CYNTHIA K. SCHNEIDER & RAYMOND M. KELLY, SP 2003-LE-004, continued from Page 354

deprive 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 Brian W. Smith, dated August 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.

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 9, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN J. BOOE, SP 2003-SU-003 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 8.0 ft. from side lot line and reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.8 ft. from side lot line. Located at 4617 Norris Ct. on approx. 11,133 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 492.

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 Booe, 4617 Norris Court, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a special permit for a modification to an R-C lot to permit construction of an addition 8.0 feet from a side lot line. The minimum requirement for a side yard is 20 feet; therefore, a modification of 12 feet is required. The application also consisted of a request for a reduction to the minimum yard requirements based on an error in building location to permit a shed to remain 0.8 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a modification of 19.2 feet is required for the shed.

Mr. Booe presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the shed was pre-existing when he purchased the home. He said if the structure was approved, he could remove the shed.

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

Mr. Ribble moved to approve in part SP 2003-SU-003 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

KEVIN J. BOOE, SP 2003-SU-003 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 8.0 ft. from side lot line and reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.8 ft. from side lot line. **(THE BZA DID NOT APPROVE THE ACCESSORY STRUCTURE)** Located at 4617 Norris Ct. on approx. 11,133 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 492. 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 1, 2003; 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 IN PART** with the following limitations:

1. This Special Permit is approved for the location of an addition and a shed shown on the plat prepared by Larry N. Scartz, dated October 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 final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.
4. The shed will be moved to another area in the yard that brings it into compliance with the Zoning Ordinance.

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

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

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

~ ~ ~ April 1, 2003, KEVIN J. BOOE, SP 2003-SU-003, continued from Page 356

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 9, 2003.

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~ ~ ~ April 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        LUCK STONE CORPORATION, SPA 81-S-064-9 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 previously approved for stone quarrying, crushing, sales and ancillary uses to permit renewal. Located at 15717 Lee Hwy. on approx. 212.26 ac. of land zoned R-C, NR and WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13 - 15, 17 pt., 33A, 38 pt., 39 pt. and 64-1 ((4)) 7A. (Admin moved from 3/18/03)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Royce Spence, 12325 Streamvale Circle, Herndon, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The application consisted of a request to amend the special permit which was approved for a stone quarry to permit renewal of the five-year approved period. The development conditions and paragraph 4 of Section 8-104 of the Zoning Ordinance require renewal of the special permit every five years. No other changes to the permit were requested.

Mr. Hammack asked Ms. Stanfield if she had read the proposed change to Development Condition 4G referenced in a letter dated March 26<sup>th</sup> from Mr. Spence. Ms. Stanfield explained that she thought it had been agreed to keep the development conditions as contained in the staff report.

Mr. Hammack asked Mr. Spence if they had agreed on the development conditions. He stated that in the past they had not been able to obtain a Non-Residential Use Permit (Non-RUP). He explained that by agreeing to Development Condition 5, they would be agreeing to it for the next five years and would like to eliminate it. He stated that he would like to add to Development Condition 4G and tear out the vines and keep them out of the property. He suggested that Development Condition 14 be amended.

Mr. Kelley noted that there had never been any differences between staff and the applicant until now. He stated that he would like them to work out the dispute and come back in two weeks.

Mr. Hammack asked staff if the removal of the vines was an earlier development condition and asked why a Non-RUP was being tied to the removal of vines. Susan Langdon, Chief, Special Permit and Variance Branch, stated that there was a requirement that they provide transitional screening. She stated that the conditions had been carried through, but with every renewal staff looked at the site again.

Mr. Hammack noted that in the development condition it did not state what the vines should be replaced with. Ms. Langdon stated that the area should be replanted with Austrian Pines, which was stated in Development Condition 5.

Mr. Hart stated that the area that contained the vines could not be seen from the street and had gotten worse over time, but that there was a house next to the overgrown area.

Mr. Pammel said concerns of an adjoining property owner at the far southwestern corner of the quarry had been raised to him regarding dead plant materials in the buffer and dust generated by the concrete recycling area. He requested a follow-up inspection and stated he would support a deferral to allow time to address the issues.

Mr. Hart noted that the applicant had recently acquired additional property and asked Mr. Spence to confirm that the quarry had no plans for expansion of the current operation east of Bull Run Post Office Road or further into the neighborhood from the existing location and that the property was acquired to act as a buffer to the community. Mr. Spence stated that was correct.

Chairman DiGiulian called for speakers.

~ ~ ~ April 1, 2003, LUCK STONE CORPORATION, SPA 81-S-064-9, continued from Page 357

Judith Heisinger, 7401 Bull Run Drive, Centreville, Virginia, president of the Bull Run Civic Association, came forward to speak. She said the neighborhood had gatherings with the quarry, which had been helpful. She said that the quarry had a good program with the Virginia Run Elementary School. Ms. Heisinger stated that there were concerns regarding the blasts leaking sediment into the wells. She stated that there had been seven wells that had been redrilled in the past five years. She stated that there seemed to be a dust problem.

Mr. Kelley moved to continue SPA 81-S-064-9 to April 22, 2003, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ April 1, 2003, (Tape 1), Scheduled case of:

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) (Def from 10/1/02)

Chairman DiGiulian noted that the Board had previously approved an intent to defer A 2001-HM-021 to June 3, 2003.

Mr. Pammel moved to defer A 2001-HM-021 to June 3, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ April 1, 2003, (Tape 1), Scheduled case of:

9:30 A.M. PETER W. AND LESLIE L. BERK, A 2003-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property was not legally subdivided. Located at 10616 Good Spring Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 7.

Mr. Hart recused himself from the hearing.

Jayne Collins, Zoning Administration Division, presented the Appeal as contained in the staff report. She stated that the lot did not meet the Subdivision regulations at the time of creation; therefore, was not a legally created lot. She stated that building permits could not be issued for such lots.

Ms. Strobel, agent for the appellants, said the applicant had originally appealed a decision from the Department of Public Works and Environmental Services (DPWES), and they were uncertain if that would be accepted. She stated that the appellant wanted to be sure all appeals were addressed. She stated that there where was a conveyance in 1953 that created the parcel, and the conveyance was made by metes and bounds, a common practice at the time. Ms. Strobel stated that there was a later subdivision that included a dedication that was signed by all parties. She said there was a plat attached to the subdivision and recorded among the land records. Ms. Strobel said there was a building permit issued for an addition in 1980. She stated that the home that was previously on the property was demolished in 2002, and a demolition permit was obtained at that time. She said that the property owners had paid taxes on the property for the past 50 years. She noted that the Board of Zoning Appeals (BZA) had overturned two appeals of determinations regarding the subject property the prior week and requested that the BZA overturn the determination in the subject appeal as well.

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

~ ~ ~ April 1, 2003, PETER W. AND LESLIE L. BERK, A 2003-DR-009, continued from Page 358

Ms. Gibb moved to overturn the determination of the Zoning Administrator in Appeal A 2003-DR-009 for the reasons set forth by the appellant's agent. Ms. Gibb stated that the comments made by the Board in the prior two appeals regarding the subject property applied for this appeal as well. Mr. Ribble seconded the motion.

Mr. Pammel requested that comments made in a previous unrelated case by Mr. Hart regarding citations of the Code that were applicable to the BZA's consideration of appeals be incorporated in the motion and reflected in the minutes, which Mr. Pammel stated were relevant to the subject appeal, as follows:

"Mr. Hart commented that the recent attempt to distinguish between Subdivision Ordinance and Zoning Ordinance questions was incorrect and was an incorrect reading of applicable Ordinance provisions. He stated that Section 18-602 required that applications for a permit shall be on forms provided by the County and shall be approved by the Zoning Administrator prior to issuance, and he said that placed the duty for determinations regarding buildability and issuances of building permits within the scope of responsibility under the Ordinance of the Zoning Administrator.

"Mr. Hart said that Section 18-603, Subsection 1, stated that no building permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116, or Chapter 118 of the Code, the Ordinance, all other applicable laws and ordinances, any proffered conditions. He said there were some exceptions procedurally called out, but he said it was clear that the Zoning Administrator, in making his or her determination of buildability, had to review the first four items.

"Mr. Hart said that Section 18-301 stated that any person aggrieved or an officer, et cetera, affected by any decision of the Zoning Administrator may appeal such decisions to the BZA. He said that the recent effort to distinguish certain categories of decisions by the Zoning Administrator was strained and contrived in light of the wording "any decision of the Zoning Administrator." He said there was a restriction on appeals of proffered conditions that would go before the Board of Supervisors (BOS), but otherwise any person aggrieved by any decision of the Zoning Administrator without limitation would come to the BZA.

"Mr. Hart said the BOS could amend the Ordinance to deprive landowners of the power to appeal certain kinds of decisions or restrict the Zoning Administrator's purview.

"Mr. Hart said that Section 18-102 dealt with the duties of the Zoning Administrator and included applications for building permits, performance of such other duties and functions as are required by the provisions of the Ordinance, and administration and interpretation of the Zoning Ordinance.

"Mr. Hart said there was nothing in the Subdivision Ordinance that dealt with there being a separate determination procedure from the BZA or that the Director had any responsibility for the buildability issue. He said the Subdivision Ordinance makes it unlawful for the Clerk to do certain things, but does not go further."

Mr. Pammel discussed with William Shoup, Deputy Zoning Administrator, a letter dated January 7, 2003, from Ms. Collins concerning buildable lot determination, which stated, "Based upon the size of this lot, it may be possible for the lot to be legally subdivided at this time, and it is suggested that your client might wish to pursue this option with DPWES." Mr. Pammel said he was mystified as to how a conclusion could be drawn that a lot determined to be an illegal lot could be subdivided to become legal, and he noted that the same language had appeared in the Virginia Avenue case. Mr. Shoup said that conflicting information had been received from DPWES over time in buildable lot cases regarding whether or not an illegal lot, because of its size, could be resubdivided into legal lots. He said the Zoning Administration Division had received contrary information from DPWES subsequent to the Virginia Avenue case, and he was not sure why the sentence had been included in the January 7, 2003 letter. He stated that before the Subdivision Ordinance amendment was adopted by the Board of Supervisors (BOS) the week prior to the hearing, DPWES had taken the position that an illegal lot could not be subdivided; however, with the amendment adopted by the BOS, if there was a subdivision of an illegal lot that occurred and the subdivision had been properly signed off and approved by the County, the amendment validated the underlying illegal lot, which then validated the subsequent subdivision that was approved.

~ ~ ~ April 1, 2003, PETER W. AND LESLIE L. BERK, A 2003-DR-009, continued from Page 359

Chairman DiGiulian called for the vote. The motion carried by the vote of 6-0. Mr. Hart recused himself.

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Mr. Pammel requested that staff cite Horton Homes with respect to the steps they constructed at 5430 Castle Bar Lane in specific violation of the building permit and said it would be appropriate for Horton Homes to come before the Board to explain why they intentionally violated a building permit provision.

Ms. Gibb stated that she would first like to see the building permit. Mr. Pammel assured her that it said no stairs on the building permit.

Mr. Hammack commented that it was not a certainty that Horton Homes had built the stairs because although the applicant said Horton Homes built them, the applicant had only lived in the home for two years. He stated that staff could do an investigation.

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~ ~ ~ April 1, 2003, (Tape 1), After Agenda Item:

Approval of Minutes for the Trustees of Kings Chapel, SP 2002-SP-051  
For inclusion into the Return of Record

Mr. Pammel requested that the wording "Ms. Gibb approved SP 2002-SP-051 for the reasons stated in the Resolution" be corrected to read "Ms. Gibb moved to approve SP 2002-SP-051 for the reasons stated in the Resolution."

Mr. Hammack stated that he did not recall the Board having previously approved minutes sent to the Circuit Court. He asked if there was a reason the Board was being asked to review the minutes that made it different than earlier procedures.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that in the usual course Minutes were prepared for entire meetings and approved by the Board prior to the portions relating to court cases being filed, but staff was unable to complete the Minutes for the entire meeting at which the subject hearing took place due to the time constraint for the filing of the Record and had prepared the portion of the Minutes relating to the subject case for the Board's approval in order to meet the filing deadline.

Mr. Hammack suggested that staff confirm the sentence attributed to Mr. McBride that read, "He stated that the applicant exceeded the FAR requirement." Ms. Langdon said that staff would listen to the tape and make a change, if necessary.

Mr. Hart commented that in the sentence which read, "Mr. Hart asked staff if the wetlands area was below the storm water pond," the word "it" should be changed to "if."

Mr. Hart indicated he recalled two additional comments made at the hearing that did not appear in the Minutes. Ms. Langdon explained that the Minutes before the Board were synopsis Minutes and that verbatim Minutes were also submitted to the Court, which would include all the information.

The Board said that, if time allowed, they would like to see the changes before approving the Minutes. Ms. Langdon said there would not be time to make the changes and provide them to the Board prior to the filing deadline with the Court, but the Board would be provided with the Minutes for their approval once they were completed.

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~ ~ ~ April 1, 2003, (Tape 1), After Agenda Item:

Approval of March 25, 2003 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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~ ~ ~ April 1, 2003, (Tape 1), After Agenda Items:

Request for Intent to Defer  
Old Town Holdings LLC, A 2003-MV-006 and A 2003-MV-007

Chairman DiGiulian noted that the Board had received a letter from Bob Lawrence, agent for the appellant, regarding the subject two appeals.

William Shoup, Deputy Zoning Administrator, explained that the appeals related to a site plan currently being reviewed by the Department of Public Works and Environmental Services (DPWES). He said there were waiver requests that were not approved by DPWES that were appealed, which he understood DPWES was currently reconsidering, that might result in the resolution of the appeals. He said Mr. Lawrence was requesting a deferral, to which staff had no objection.

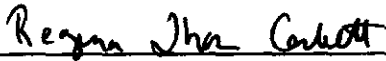
Mr. Pammel moved to approve the request for an Intent to Defer to May 13, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:38 a.m.

Minutes by: Alison Capo

Approved on: September 28, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 8, 2003. The following Board Members were present: Vice Chairman John Ribble; Robert Kelley; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:02 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.

-- April 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KIN PONG LEE, VC 2003-SU-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line such that side yards total 18.6 ft. Located at 13619 Weinstein Ct. on approx. 12,083 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 54-2 ((11)) 5.

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. Kin Pong Lee, 13619 Weinstein Court, Centreville, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a shed, 7.0 feet from side lot line such that the side yards total 18.6 feet. The Ordinance requires a minimum side yard of 8.0 feet with a total side yard of 24.0 feet; therefore, a variance of 1.0 foot and 5.4 feet was requested.

Mr. Lee presented the variance request as outlined in the statement of justification submitted with the application. He said the house was built in a way that it did not meet the PDH-2 zoning requirement of a 24-foot side yard because there was only 23 feet. Mr. Lee stated that they had informed their neighbors on each side about a year and a half ago that they were planning to build a shed addition, and the neighbors had no opposition at the time. He said the proposed addition was needed to increase their storage space. Mr. Lee said they worked with an architect to design the proposed addition so it would blend in with the other houses in the neighborhood, using the same brick, siding, and trim work as was on their existing house to create a uniform look. He said the addition would conform to existing bump-outs in the rear of the house and on the upper level on the same side as the proposed addition.

Vice Chairman Ribble called for speakers.

Ravi Gorur, 13621 Weinstein Court, Centreville, Virginia, came forward to speak in opposition of the application. Mr. Gorur stated that his house was set back approximately 20 feet from the front of the subject house, with the subject house's side yard being his front yard. He showed a photograph taken of the area of the proposed addition as seen from the porch area of his house and said the proposed addition would be fully visible from his front porch.

Debbie Schmidt, 13617 Weinstein Court, Centreville, Virginia, came forward to speak in opposition of the application. Ms. Schmidt stated that she had never been asked about or told about the proposed addition by the applicant. She said there was no such structure like the proposed one in the surrounding neighborhood. Her main concerns dealt with the proposed addition limiting the space and detrimentally affecting the visual look of the neighborhood, property values potentially lowering because of the change of the look of the neighborhood, and the proposed addition setting precedence.

Mr. Lee stated, in his rebuttal, that he did not agree that the proposed addition would change the look of the neighborhood because neighboring houses were approximately 8 feet from the property lines and his proposed addition would be 7.5 feet from the property line.

Mr. Hart asked the applicant which measurement to the property line was correct, the 7.5 feet the applicant stated at the meeting or the 7.0 feet reflected on the proposed plat. Mr. Lee replied that he believed that Land Design had miscalculated the 7.0 foot measurement. He said that the existing structure was 11.5 feet from the property line, and with the proposed 4-foot extension, that would leave 7.5 feet.

Mr. Hart asked if the 4-foot measurement was an inside or outside measurement. Mr. Lee replied that it was an outside measurement.

~ ~ ~ April 8, 2003, KIN PONG LEE, VC 2003-SU-014, continued from Page 363

Mr. Hart asked if the function of the addition was a storage shed. Mr. Lee replied affirmatively.

Mr. Hart asked if the proposed addition would be connected through the inside of the house and whether it was to be a heated space. Mr. Lee replied that it would be connected to the inside of the garage, not the house structure itself, and it would not be heated.

Mr. Hart asked if there was some reason a free-standing storage shed could not be located someplace in the back yard. Mr. Lee said he did not think there was enough room in the back yard.

Mr. Hart asked staff what the minimum setbacks would be to place an 80-square-foot shed by right in the back yard. Ms. Shulenberger replied that based on the R-2 cluster, the rear that would be 25 feet and 8 feet from the side.

Mr. Hart asked if it was shorter than a certain height, could it be placed farther back in the back yard. Susan Langdon, Chief, Special Permit and Variance Branch, replied that if it was shorter than 8.5 feet in height, yes.

Mr. Hart asked if the closest point in the back yard was 46.2 feet to the house. Ms. Langdon replied that was what the plat identified.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to deny VC 2003-SU-014 for the reasons stated in the Resolution.

Mr. Pammel noted that as per the discussion with staff, there was the option of a free-standing storage shed in the rear of the yard if it met the requirements as prescribed by the Ordinance.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KIN PONG LEE, VC 2003-SU-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line such that side yards total 18.6 feet. Located at 13619 Weinstein Ct. on approx. 12,083 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 54-2 ((11)) 5. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 8, 2003; and

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

1. The applicant is the owner of the land.
2. Although the lot is somewhat narrow, it doesn't deviate much in terms of its characteristics from those across the street as well as the adjacent property to the west.
3. The characteristics as stated by the applicant do not satisfy the requirements for variance.
4. The applicant could build an addition on the side of the house with a dimension of 3.5 feet, which would be in compliance with the 8-foot minimum side yard requirement.

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;

~ ~ ~ April 8, 2003, KIN PONG LEE, VC 2003-SU-014, continued from Page 364

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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. Hart seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. 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 April 16, 2003.

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~ ~ ~ April 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      ROBERT AND LYNNE KACZMAREK, VC 2003-LE-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.2 ft. from rear lot line. Located at 7315 Hollyford La. on approx. 5,355 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-3 ((11)) (54) 11.

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. Lynne Kaczmarek, 7315 Hollyford Lane, Alexandria, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a screened porch, 17.2 feet from the rear lot line. The Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 7.8 feet was required for the addition.

Ms. Kaczmarek presented the variance request as outlined in the statement of justification submitted with the application. She said there was an existing deck where the addition was proposed that was 12 feet by 20 feet. Ms. Kaczmarek stated that the variance was requested to accommodate a roof on the existing deck. She said the rear of the property backed to a Virginia Power right-of-way with pine trees that was owned by Kingstowne, so the proposed addition would not be viewable from the rear. She said the neighbors to each

~ ~ ~ April 8, 2003, ROBERT AND LYNNE KACZMAREK, VC 2003-LE-013, continued from Page 365

side of the subject property were notified and the proposed addition would have no impact on them. Ms. Kaczmarek stated that the proposed addition would be designed to match the existing structure using the same materials.

Mr. Hart asked the applicant if the pine trees in the photographs presented were in the applicant's backyard and whether they would remain. Ms. Kaczmarek replied that the trees were in her backyard and they were going to remain.

Mr. Hart asked if Lots 38 and 47 behind the applicant's property were both owned by Kingstowne. Ms. Kaczmarek replied that the land belonged to Kingstowne but could not be built upon because it was a right-of-way.

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

Mr. Hammack moved to approve VC 2003-LE-013 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT AND LYNNE KACZMAREK, VC 2003-LE-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.2 ft. from rear lot line. Located at 7315 Hollyford La. on approx. 5,355 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-3 ((11)) (54) 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 April 8, 2003; 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 backs up to a Virginia Power transmission line easement of over 100 feet with no residential property directly behind it that would be impacted.
4. The proposed construction will not be a detriment to the adjacent property and will be compatible with the existing residential development.

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

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

~ ~ ~ April 8, 2003, ROBERT AND LYNNE KACZMAREK, VC 2003-LE-013, continued from Page 366

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson of Alexandria Survey International, LLC., dated December 6, 2002 and 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 April 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. HASSAN A. MOSTAFAVI, TRUSTEE, VC 2003-DR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 1504 Dewberry Ct. on approx. 12,631 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((9)) 96.

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. Hassan Mostafavi, 1504 Dewberry Court, McLean, Virginia, replied that it was.

Mavis Stanfield, 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, consisting of the enclosure of an existing carport, 7.0 feet from the southern side lot line. A minimum side yard of 12 feet is required;

~ ~ ~ April 8, 2003, HASSAN A. MOSTAFAVI, TRUSTEE, VC 2003-DR-009, continued from Page 367

therefore, a variance of 5 feet was requested.

Mr. Mostafavi presented the variance request as outlined in the statement of justification submitted with the application. He stated that the existing carport shared the same roof as the house and was built with the same materials and design elements. Mr. Mostafavi said the addition was requested for security reasons, regarding personal property; for safety reasons, to make access for intruders through the back of the house more difficult; and to make the structure more aesthetically pleasing by covering up items stored in the carport.

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

Mr. Hart moved to approve VC 2003-DR-009 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HASSAN A. MOSTAFAVI, TRUSTEE, VC 2003-DR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 1504 Dewberry Ct. on approx. 12,631 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((9)) 96. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 8, 2003; 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 not rectangular, and the house is set at an angle to the side lot lines.
4. On the side where the variance is needed, the corner of the existing carport is quite close to the property line.
5. The existing carport is fairly massive in appearance with a substantial roof and brick columns.
6. The proposed enclosure of the carport as a garage will not have a significant negative impact on the neighborhood and is a slight change from what is in existence.

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

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



~ ~ ~ April 8, 2003, HASSAN A. MOSTAFAVI, TRUSTEE, VC 2003-DR-009, continued from Page 368

the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson, dated December 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.

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 April 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ABDUL ASKARYAR, VC 2003-LE-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6202 Pioneer Dr. on approx. 8,797 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 520.

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. Farhad Gulban, the applicant's agent, 6202 Pioneer Drive, Springfield, Virginia, replied that it was.

Mavis Stanfield, 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 8.0 feet from the southern side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 2 feet was requested.

Mr. Hart asked if a variance would still be needed if the proposed addition was shifted over two feet to the

right. Ms. Stanfield replied that a variance would not be needed if the addition was 10 feet from the side lot line.

Mr. Hart asked if the 8-foot measurement was to the rear corner. Ms Stanfield replied that was correct.

Mr. Gulban presented the variance request as outlined in the statement of justification submitted with the application. He stated that the original house was built in 1956. He said the addition was requested because the applicant's family needed more living space.

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

Ms. Gibb moved to approve VC 2003-LE-015 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ABDUL ASKARYAR, VC 2003-LE-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6202 Pioneer Dr. on approx. 8,797 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 520. 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 8, 2003; and

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

1. The applicant is the owner of the land.
2. The request is modest.
3. The applicant would not need a variance if the lot were the same width at the back as it is at the front. Only the rear corner of the proposed addition is 8 feet from the property line.
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

~ ~ ~ April 8, 2003, ABDUL ASKARYAR, VC 2003-LE-015, continued from Page 370

all reasonable use of the subject property, or

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 G. Robert Fuller, dated December 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 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. 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 April 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. COLVIN RUN, L.L.C., VC 2003-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots and an outlot with proposed Lots 2 and 3 having a lot width of 10.0 ft. and proposed Lot 4 having a lot width of 12.62 ft. and permit dwelling to remain 18.5 ft. from front lot line. Located at 10208 Colvin Run Rd. on approx. 5.46 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 33 pt.

Vice Chairman Ribble noted that VC 2003-DR-018 had been moved to April 22, 2003, at the applicant's request.

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~ ~ ~ April 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN A. BANNISTER, TRUSTEE, VC 2002-MA-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 3 lots with proposed Lots 2 and 3 having lot widths of 0.0 ft. Located at 4921 Sunset La. on approx. 2.88 ac. of land zoned

~ ~ ~ April 8, 2003, STEPHEN A. BANNISTER, TRUSTEE, VC 2002-MA-124, continued from Page 371

R-2. Mason District. Tax Map 71-4 ((1)) 2. (Admin moved from 11/5/02 12/10/02 and 2/4/03 per appl. Req.)

Vice Chairman Ribble noted that VC 2002-MA-124 had been moved to May 13, 2003, at the applicant's request.

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~ ~ ~ April 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. ROBINETTE, VC 2002-HM-188 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 20.30 ft. and permit dwelling 17.3 ft. from front lot line. Located at 1847 Hunter Mill Rd. on approx. 2.01 ac. of land zoned R-1. Hunter Mill District. Tax Map 27-2 ((1)) 5. (def. from 2/11/03) (cont'd from 2/25/03)

Vice Chairman Ribble indicated that there was a request for deferral. There were no speakers present to speak to the issue of deferral.

Mr. Kelley moved to defer VC 2002-HM-188 to April 22, 2003. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 8, 2003, (Tape 1), After Agenda Item:

Approval of November 5, 2002, and November 26, 2002 Minutes

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

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~ ~ ~ April 8, 2003, (Tape 1), After Agenda Item:

Consideration of Acceptance  
Application for Appeal Submitted by the  
West Lewinsville Heights Citizen's Association and Stephen Sulzer

Regina Murray, Zoning Administration Division made staff's presentation, stating that the subject property was Lewinsville Park, a Fairfax County District Park that contained approximately 37.7 acres of active and passive recreation. The site is located at 1659 Chain Bridge Road between Great Falls Road to the west and Davidson Road to the east. The appellants were the West Lewinsville Heights Citizens Association and Stephen Sulzer. Mr. Sulzer was listed as the President of West Lewinsville Heights Citizens Association and was the property owner of 7000 Symphony Court, which was identified as Lot 1 on the vicinity map.

Ms. Murray identified the four issues on appeal for Board of Zoning Appeals' (BZA) consideration, as follows; whether the determination of the Director of the Department of Planning and Zoning (DPZ) that a 2232 Review by the Planning Commission (PC) was not required was an issue properly before the BZA; whether the execution of a memorandum of agreement by the Director of the Park Authority constituted the Zoning Administrator determination that a special permit or special exception was not required; whether an oral determination by the Zoning Administrator conveyed to the Director of the Park Authority could be appealed; and whether West Lewinsville Heights Citizens Association and Stephen Sulzer had standing as aggrieved parties to file an appeal.

Ms. Murray stated that each issue on appeal centered around the execution of a memorandum of agreement between the Fairfax County Park Authority and McLean Youth Soccer, Incorporated, which proposed improvements to an existing athletic field and its use by Marymount University for soccer and lacrosse

~ ~ ~ April 8, 2003, AFTER AGENDA ITEMS, continued from Page 372

games. She said that a timeline of the various events was set forth in the March 31<sup>st</sup> memorandum to the BZA.

Ms. Murray, in regard to the appeal questions, said the Director of the DPZ determined that a 2232 Review by the PC was not required. She stated that the provisions of a 2232 Review were set forth in Article 3 of the Code of Virginia and the provisions related to the administration of the Comprehensive Plan.

Ms. Murray said Article 7 of the Code of Virginia set forth the provisions related to the administration of the Zoning Ordinance, and Sections 15.2-2309 and 15.2-2311 specifically limited appeals to the BZA to those determinations of the Zoning Administrator or another administrative officer made in the administration or enforcement of Article 7 or any ordinance adopted thereto; therefore, staff felt the 2232 Review issue was not properly before the BZA.

Ms. Murray stated that if the BZA determined the issue had been presented to the proper body, it should be noted that the decision at issue was made on December 24, 2002, and the appeal was filed on February 14, 2003, 52 days following the decision. She said staff believed that a component of the appeal was not timely filed.

Ms. Murray, in regard to the Zoning Administrator determination, stated that execution of a memorandum of agreement by the Director of the Park Authority did not constitute a decision made in the administration and enforcement of the Zoning Ordinance. She said the position of the Zoning Administrator regarding the need for a special permit or special exception in order for Marymount to use the field was conveyed orally with no documented information setting forth the basis of the position. She stated that for that reason, staff felt the appeal of this issue was premature and not properly filed.

Ms. Murray said that if it was determined that the position could be appealed, it should be noted that the position of the Zoning Administrator was conveyed on December 11, 2002, and the appeal was filed on Feb. 14, 2003, 65 days following the oral decision. She said that staff believed that component of the appeal was not properly filed.

Ms. Murray, in regard to aggrieved party standing, stated that based upon Virginia case law which had been cited in other cases before the BZA and as outlined in the memo to the BZA, West Lewinsville Heights Citizens Association, as an entity, did not own property adjacent to or in the vicinity of the property. She said Mr. Stephen Sulzer, as an individual, could qualify as an aggrieved party because he owned property approximately 300 feet to the east of the property. She stated that staff felt that West Lewinsville Heights Citizens Association did not have standing as an aggrieved party in the matter.

Mr. Hammack asked if staff disagreed that Mr. Marr's December 19, 2002 letter was received prior to Mr. Zook's e-mail to Mr. Kane on December 24. Ms. Murray indicated that staff did not disagree that Mr. Marr's letter was received prior to Mr. Zook's e-mail being sent.

Mr. Hammack asked how an aggrieved party could appeal an e-mail to a third party. William Shoup, Deputy Zoning Administrator, replied that a third party would not even be aware of an e-mail determination between County staff unless a third party had been copied on it.

Mr. Hammack asked how an aggrieved party could appeal an oral communication between staff and a third party. Ms. Murray asked Mr. Hammack if he was referring to the December 11 communication between the Park Authority Director and Zoning Administrator, and Mr. Hammack replied affirmatively. Ms. Murray stated that it was staff's position that component of the appeal was not in proper form because the communication was internal between staff members. She said it was suggested to the appellants that they formally pose the question and allow staff to respond in writing and then to appeal, but the appellants had chosen to move forward with the appeal in its current form.

Mr. Hammack asked if staff agreed that Section 2232 was not under the Zoning Ordinance. Ms. Murray replied that staff agreed that Section 2232 was not under the administration and enforcement of the Zoning Ordinance.

Mr. Hart read the sentence, "I am still researching the zoning response and will get back to you on that issue," from David Marshall's e-mail marked as Attachment E to the staff report and asked whether there

~ ~ ~ April 8, 2003, AFTER AGENDA ITEMS, continued from Page 373

was ever a response to that issue. Ms. Murray replied that the issue was originally posed to staff from the Park Authority Director in early December prior to the Park Authority's internal review and public hearing on the memorandum of agreement, and the determination by the Zoning Administrator on the issue regarding the special permit/special exception applicability was made on December 11, the day of the public meeting before the Park Authority, so a decision was made orally in response to the Director of the Park Authority's request. Ms. Murray said in regard to the e-mail correspondence to the appellants' agent, she was not sure if it was conveyed to him that the decision had been made on December 11.

Mr. Hart said that it didn't make sense that an e-mail was sent on January 23 to the appellants' lawyer answering a question incorrectly when a decision was already made on December 11.

Mr. Shoup said his understanding was that counsel for the appellants was present at the Park Authority meeting in December so they would have been made aware of the zoning determination through the discussion at the Park Authority meeting. He suggested that Mr. Marshall speak as to what he meant by the sentence Mr. Hart had read into the Record.

David Marshall, Assistant Director, Planning Division said the request he had gotten from Mr. Banks was in regard to how the 2232 Review was communicated in response to the Park Authority, so he researched the question and provided the e-mail, but he said he was not familiar at that time with the outcome of the zoning response, and that was why he stated that he would have to get back to him. Mr. Marshall said he thought he had ultimately referred Mr. Banks to Jane Gwinn's office to determine how the zoning response was communicated.

Mr. Hart stated that he agreed that a 2232 Review was separate from a Zoning Ordinance problem. He said the question of whether the Director of DPZ can preempt a 2232 Review was probably a Circuit Court question.

Mr. Hart said the appellants' attorney had been saying there were two problems; either there was a 2232 problem or did the use require a special exception or a special permit, and he could not find anyplace where the question had been answered. Mr. Hart asked whether his understanding was correct that the question was not being worked on and would not be answered, but that an oral determination was made on December 11 with someone present so that started the clock running.

Mr. Shoup replied that the appellants were not being bound by the December 11 oral determination. He said the appellants were told they could request the determination formally in writing to receive a response in writing and they could then appeal the determination. Mr. Shoup stated that if the BZA did not agree with staff that the appeal was premature, then December 11 would be the starting point and the appeal would not be timely.

Mr. Hart asked if anyone had a copy of Title 15.2 at the meeting, which no one said they had, but it could be sent for.

Mr. Hart asked if procedurally a public hearing was needed to determine whether there was standing or not, whether the appellants were sufficiently aggrieved rather than addressing the issue as an after agenda item, and a lengthy discussion on the issue ensued during which Jan Brodie, County Attorney's Office, stated there was no factual dispute because no one had stated that the homeowners association owned any property, but it was clear that the one homeowner did own property and would be aggrieved.

Mr. Hart asked, in the Ordinance when it said any decision of the Zoning Administrator could be appealed to the BZA, under the assumption that included both written and unwritten, when would the 30 days commence to run if it was not written down.

Mr. Shoup said in the past they had tried to make it a written determination that was subject to appeal so everyone knew what was asked and what the basis was for the decision.

Ms. Brodie discussed the Lilly case where the Supreme Court found that an oral decision could be appealed, but in that case the oral decision was made by the Zoning Administrator at a public hearing where the appellant was present and the Zoning Administrator stated the decision, gave the reasons for the decision and stated that the decision was final and could be appealed to the BZA. Ms. Brodie said in the subject case

~ ~ ~ April 8, 2003, AFTER AGENDA ITEMS, continued from Page 374

it was an informal conversation between the Zoning Administrator and the Park Authority Director with no basis for the decision that was not directed to or in the presence of the homeowner. She stated that the wiser, more prudent route would be for the appellants to apply so the unknowns could be wiped out.

Mr. Hart asked whether the term "any decision" did not include a decision informally communicated between departments. Ms. Brodie replied that she believed it did include an oral opinion, but not one made in an informal conversation with no basis given.

Mr. Hart asked if Ms. Brodie agreed with Mr. Shoup in that if the appeal was not accepted, the appellants had preserved their question on the zoning issues and once the determination was made, the appellants could appeal and were not procedurally defaulted because of the informal conversation.

Ms. Brodie said the appellants would not be subject to an Alward argument and would not be barred from an appeal.

Mr. Hammack asked whether staff would be relying on the Lilly decision on these types of appeals in the future. Ms. Brodie replied that these cases were so fact specific as to how and when a decision was conveyed that the Lilly case was good guidance for oral decisions.

Mr. Pammel stated that he hoped that in the future the Zoning Administrator issued all decisions and opinions in writing.

Mr. Pammel said a week after the oral decision, Mr. Means (phonetic), an attorney, wrote an opposition letter expressing the association's concerns regarding the issuance of a permit or the right for Marymount to use the facilities. Mr. Pammel asked if Mr. Means was advised through correspondence that the Zoning Administrator had issued an oral opinion one week earlier. Ms. Murray replied that Mr. Means was not advised in writing.

Bill Marr, on behalf of the West Lewinsville Heights Citizens Association and Stephen L. Sulzer, presented the request for consideration of acceptance of the application for appeal. He stated that he was responding to Bill Shoup's March 31, 2003, memorandum concerning the consideration of acceptance.

Mr. Marr, in regard to Mr. Shoup's argument that the determination by DPZ that a Section 2232 Review was not required was not a decision that could be appealed to the BZA, said Mr. Shoup's argument was that the decision was not made in context of enforcing the Zoning Article 7 of Chapter 22, Title 15.2 of the Virginia Code or the Zoning Ordinance so the BZA had no authority. Mr. Marr said Mr. Shoup's argument asserted that nothing in Article 7 or the Zoning Ordinance required compliance with Section 2232 for public parks.

Mr. Marr stated that the Zoning Ordinance and the use of Lewinsville Park as a college athletic facility must comply with the Comprehensive Plan, and he discussed the basis for his statement and that issue of the appeal.

Mr. Marr discussed the reasoning why the appellants disagreed with Mr. Shoup's argument that the appeal on the Section 2232 issue was not timely filed. He stated that the date for the commencement of the 30-day period should have been January 17, 2003, because it was the only known firm public date in the proceedings.

Mr. Marr, in regard to Mr. Shoup's argument that the Zoning Administrator's oral decision could not be appealed, said that there was nothing in the applicable statutes or Ordinances that stated oral decisions could not be appealed, and he discussed the basis for his position that any decision of the Zoning Administrator could be appealed.

Mr. Marr said if the BZA decided that a request in writing and response was more appropriate, that would be agreeable.

Mr. Marr, in regard to the issue of whether the Lewinsville Heights Citizens Association was aggrieved and had standing, said that citizens, homeowners' associations, and other groups regularly and routinely appeared before County agencies, commissions, and boards to address land use issues and were encouraged to submit opinions before plans were considered by the agencies, commissions, and boards.

~ ~ ~ April 8, 2003, AFTER AGENDA ITEMS, continued from Page 375

He stated that Section 18-301 of the Zoning Ordinance permitted anyone who was aggrieved to appeal and that the language taken in context clearly established that the language be read and interpreted as broadly and as inclusively as possible. He said "aggrieved" was not defined and by nature would include some layer of subjectivity. Mr. Marr explained that a person who believed he was aggrieved because of a very minor issue, such as a minor aesthetic issue, may not be an appropriate candidate for appeal, but an association of homeowners and residents in the same community where there was a potential for substantial traffic, parking, and noise problems clearly had standing. He added that those were exactly the issues which served as one basis for the association's existence and one reason why its members joined. He said there was no requirement in any statute or ordinance saying only natural persons who owned or resided on adjoining lots may be proper applicants.

Mr. Marr requested that the BZA consider the application filed properly and that the appeal proceed.

Mr. Marr, in regard to the issue of e-mail transmissions between County staff regarding decisions made, said that Judge Scott, in a Fredricksburg Circuit Court case, dealt directly with the use of e-mail between Town Council members and ruled that the e-mail traffic constituted a meeting and needed to be done in open session.

Mr. Marr stated that the December 19 letter, which he said addressed outstanding issues and was sent after the December 11 meeting, deserved a reply and did not receive one.

Mr. Pammel said he agreed that a reply to the December 19 letter should have been forthcoming.

Mr. Hart moved to reject the application for appeal. Mr. Pammel seconded the motion.

Mr. Hart said that the BZA did not have a proper appeal before them. He said he did not believe that procedurally an appeal of a determination by the Director of DPZ regarding a 2232 Review would come to the BZA. Mr. Hart also stated that he thought the Planning Commission rather than the Director of DPZ would make the determination as to whether a 2232 Review was required. He said although there were some references in Article 3 to Zoning Ordinances, an appeal regarding a determination about whether a 2232 hearing was required or not would be a Circuit Court concern. Mr. Hart said he thought the appellant could still appeal before the BZA the determination on the zoning issues as far as whether a special exception or special permit use would be required, but that he did not think there was a determination to appeal. He said the appellants should wait for the letter and appeal that and commented that staff and the County Attorney's Office both stated that the issue was preserved. Mr. Hart said that the execution of the memorandum would not have been a determination or decision and not within the scope of what types of decisions could be appealed. In regard to the question of the appeal of an oral determination, Mr. Hart said that under the Ordinance any decision of the Zoning Administrator could be appealed to the BZA, but he said a private conversation or informal conversation would not start the 30 days running. In regard to the issue of standing, Mr. Hart said he was troubled that standing issues could be disposed of as an after agenda item. He thought a public hearing would have to be held and evidence heard as to how the members of the association would be aggrieved, but without a determination to be appealed, he did not feel a hearing was needed on the standing issue alone.

Mr. Pammel said he did not agree with the issue of when the determination was made and thought it was clearly something that could be appealed, but he said he would feel more comfortable if the appellants would re-file immediately with the issues and staff respond so the matter could come before the BZA within 30 days. He said he would support the motion.

Mr. Hammack said he would like to see the BZA defer decision and/or consolidate this with whatever results if Mr. Marr filed another request and an appeal so as to not summarily dismiss all of the issues. He said, regarding the December 11 Zoning Administrator decision not to require a special permit or special exception and hearing, he was not sure that the December 19 letter should not be treated as an appeal of that decision. Mr. Hammack said he would like to give more consideration to the basis in view of what the Zoning Administrator said about the Lilly case where a party was there and on notice.

Mr. Kelley said he agreed with Mr. Hammack that it should be deferred and he didn't think the appropriate place to dispose of the matter with finality was as an after agenda item. He said he would like to think about it and hear some more about it.



~ ~ ~ April 8, 2003, AFTER AGENDA ITEMS, continued from Page 376

Mr. Hart asked how long it would take to have a determination from the Zoning Administrator on whether the proposed use required a special exception or special permit if Mr. Marr sent the letter that day asking for a determination.

Mr. Shoup replied probably a couple of days. Assuming Mr. Marr filed an appeal immediately, Mr. Shoup said it would take a little more than 30 days in order to properly advertise, get notices sent, and get everything in order.

Mr. Hammack said one thing that was not discussed was what was in the Comprehensive Plan and whether it would even require it to be changed. He said there were a lot of sub-issues right below the surface, and the issues of notice, when the appeal period should run, and the issue of deciding as an after agenda item concerned him.

Mr. Hammack made a substitute motion to defer decision on consideration of acceptance to April 29, 2003. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Hart complimented staff on the preparation of the consideration of acceptance memorandum and attachments.

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~ ~ ~ April 8, 2003, (Tape 2), After Agenda Item:

Approval of Minutes for the Trustees Kings Chapel, SP 2002-SP-051  
For Inclusion into the Return of Record. (def. from 4/1/03)

Mr. Hart moved to approve the minutes. Mr. Kelley seconded the motion, which carried by a vote of 4-0. Mr. Pammel and Mr. Hammack were not present for the vote, and Chairman DiGiulian was absent from the meeting.

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~ ~ ~ April 8, 2003, (Tape 2), After Agenda Item:

Approval of April 1, 2003 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb 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.

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~ ~ ~ April 8, 2003, (Tape 2), After Agenda Item:

Approval of BZA Meeting Dates for the Last Six Months of 2003  
Memorandum from Regina Thorn Corbett dated April 8, 2003.

Ms. Gibb made a motion to move this item to the April 29, 2003, After Agenda. Mr. Kelley 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.

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--- April 8, 2003, continued from Page 377

As there was no other business to come before the Board, the meeting was adjourned at 10:44 a.m.

Minutes by: Kathleen A. Knoth

Approved on: May 18, 2004

Regina Thorn Corbett

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 15, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley and James Pammel. Mr. 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

~ ~ ~ April 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        ROGER A. & JACQUELYN O. WILSON, VC 2003-PR-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence 6.0 ft. in height in front yard of a corner lot. Located at 2840 Cleave Dr. on approx. 10,958 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 51-3 ((2)) 82.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Roger Wilson, 2840 Cleave Drive, Falls Church, Virginia, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a fence greater than 6.0 feet in height to remain in the 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

Mr. Wilson presented the variance request as outlined in the statement of justification submitted with the application. He explained that his two dogs were jumping over the 3.5 foot fence that he had, so he replaced it with a 6.0 foot fence. He said the 6.0 foot fence provided additional safety because it precluded people in the neighborhood from approaching the dogs in the yard and playing with them in an unsupervised manner. He submitted a letter of support signed by a majority of his neighbors.

Mr. Hart asked the applicant what company constructed the fence. Mr. Wilson replied Long Fence constructed the fence.

Ms. Gibb asked staff if a complaint had been filed to generate the variance request. Ms. Shields replied that a complaint had been filed.

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

Mr. Hammack moved to approve VC 2003-PR-020 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGER A. & JACQUELYN O. WILSON, VC 2003-PR-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence 6.0 ft. in height in front yard of a corner lot. Located at 2840 Cleave Dr. on approx. 10,958 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 51-3 ((2)) 82.

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 15, 2003; 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 burdened by a double front yard requirement, which makes a functional side and rear yard a front yard under the Ordinance.
4. The photographs reflect that the fence is pulled in from the property line by several feet.
5. The existing fence replaces a smaller fence.
6. The neighbors are in support of the fence.
7. The fence will not change the character of the zoning district or be detrimental to adjacent properties.

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

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

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

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

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

1. This variance is approved for the fence shown on the plat prepared by LS<sub>2</sub>PC, dated December 19, 2002, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

~ ~ ~ April 15, 2003, ROGER A. & JACQUELYN O. WILSON, VC 2003-PR-020, continued from Page 380

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 April 23, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE AND ELIZABETH TOWNSEND, VC 2003-SU-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 8 in. from side lot line. Located at 12013 Hamden Ct. on approx. 20,058 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 18.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George and Elizabeth Townsend, 12013 Hamden Court, Oakton, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 8 inches from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore a variance of 14.3 feet was requested.

Mr. Townsend presented the variance request as outlined in the statement of justification submitted with the application. He explained the front corner of the proposed garage would be located 8.0 feet from the side lot line and the rear corner .8 feet from the side lot line. He referred to the signed petition of support from all of his neighbors contained in the staff report. He said the garage would be in excess of 20 feet away from the most affected property. Mr. Townsend stated that the home was situated on the lot in such a way to preclude construction of the proposed garage in any other location. He said the garage would be in character with the neighborhood and would be an attractive addition.

Ms. Gibb asked the applicant if the stockade fence would remain. Mr. Townsend replied the stockade fence would be removed.

Mr. Pammel stated that he could not support the garage to be located .8 inches from the side lot line. He suggested the applicant move the garage forward toward the front of the lot to provide more distance between the rear corner of the garage and the side lot line. Mr. Townsend replied he had not considered that possibility.

Mr. Hart asked if there was an overhand extending from the garage. Mr. Townsend replied there was no overhand. Mr. Hart stated he agreed with Mr. Pammel's point of view and suggested that the applicant attempt to relocate the garage toward the front of the lot. Mr. Townsend stated that he was interested in meeting with an architect to explore other alternatives.

There were no speakers.

Mr. Pammel moved to continue VC 2003 SU-024 to May 20, 2003. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ April 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ELIZABETH AND DELIO GIANTURCO, VC 2003-MA-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. and eave 4.5 ft. from side lot line. Located at 6338 Waterway Dr. on approx. 22,333 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 655.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

-- April 15, 2003, ELIZABETH AND DELIO GIANTURCO, VC 2003-MA-019, continued from Page 381

Appeals (BZA) was complete and accurate. Delio Gianturco, 6338 Waterway Drive, Falls Church, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, 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 5.5 feet and eave 4.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet for the addition and 12 feet for the eave; therefore, variances of 9.5 feet and 7.5 feet were requested.

Mr. Gianturco presented the variance request as outlined in the statement of justification submitted with the application. He explained that he wanted to expand his single car garage to a two car garage to provide protection to both of his vehicles and for additional storage space. He said most of the homes in the neighborhood had two-car garages. He stated that the narrowness of the lot resulted in the need for the variance. Mr. Gianturco said his neighbors were in support of the variance request.

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

Mr. Pammel stated that he could not support the request because the variance request was too great.

Mr. Hart moved to approve VC 2003-MA-019 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIZABETH AND DELIO GIANTURCO, VC 2003-MA-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. and eave 4.5 ft. from side lot line. Located at 6338 Waterway Dr. on approx. 22,333 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 655. 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 15, 2003; 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 house from the 1950s with a 1-car garage.
4. The lot has a topography issue with a significant slope going up in the back which precludes having a driveway around the side of the house or a garage in the back.
5. The lot is not rectangular and has an arc of approximately 90 feet in the front where in the R-2 District, it is usually 100 feet.
6. The orientation of the house is the long way across the short side of the lot.
7. Because of the narrowness of the lot and the unusual topography, the only way to have a 2-car garage is to go into the minimum side yard.
8. The neighbors are in support of the application.
9. Based on the photographs, there would not be a significant negative impact on the neighborhood with the topography and the existing vegetation.
10. Because of the topography and the hill going up in the back, the addition is not really a 2-story addition because the ground level in front is significantly buried in the back so that the height of it will not be a problem for the neighbors.

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

~ ~ ~ April 15, 2003, ELIZABETH AND DELIO GIANTURCO, VC 2003-MA-019, continued from Page 382

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Brian W. Smith of B.W. Smith and Associates, Inc., dated November 19, 2002, as revised through January 14, 2003, 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 5-1. Mr. Pammel voted against the motion, and Mr. Ribble was absent from the meeting.

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~ ~ ~ April 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M.          GRETCHEN H. WALZL, VC 2003-MV-017 Appl. under Sect(s). 18-401 of the Zoning

Ordinance to permit construction of carport 3.8 ft. from side lot line. Located at 7917 New Market Rd. on approx. 12,123 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((9)) (14) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jonathan Gold, 6523 Beverly Avenue, McLean, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a carport 3.8 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 8.2 feet was requested.

Ms. Walzl presented the variance request as outlined in the statement of justification submitted with the application. She stated that she needed a variance to replace the previous carport that collapsed during a recent snow storm. She said the proposed carport would be in character with the neighborhood.

Ms. Gibb asked the applicant if the previous carport was attached to the home. Ms. Walzl replied that it was a detached carport. Ms. Gibb asked the applicant if the proposed carport would be in the same location. Ms. Walzl replied that the proposed carport would be located in the same position as the old one but would also be attached to the home.

Ms. Langdon amended staff's presentation and explained that attached carports could extend 5.0 feet into the side yard; therefore, the proposed variance was 3.2 feet.

There were no speakers, and Chairman DiGiulian 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

GRETCHEN H. WALZL, VC 2003-MV-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 3.8 ft. from side lot line. Located at 7917 New Market Rd. on approx. 12,123 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((9)) (14) 24. 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 15, 2003; 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.
3. The request is to replace a carport that was detached from the home with a carport attached to the home, but in the same location.
4. The variance request is a modest 3.2 feet and only needed for the rear corner; the front corner is a foot further away because of the shape of the lot.
5. The applicant indicated that the proposed location is the only place for the carport because of a large tree on the other side of the house.



~ ~ ~ April 15, 2003, GRETCHEN H. WALZL, VC 2003-MV-017, continued from Page 384

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 carport shown on the plat prepared by Bryant L. Robinson of Alexandria Surveys International, LLC, dated January 6, 2003, 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. 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 April 23, 2003. This date shall be deemed to be the final approval date of this variance.

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-- April 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM M. & ANN NELSON AND ANN. N. EVERETT, VC 2003-DR-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into six lots with proposed Lots 2A, 3A, 4 and 5 having lot widths of 2.03 ft. and proposed Lot 6 having a lot width of 2.02 ft. Located at 1620, 1622, 1624 Davidson Rd. on approx. 3.74 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 30A, 30B & 30C.

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 Moesle, 9125 Center Street, Manassas, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a lot width variance to permit the subdivision of three lots into six lots with proposed lots 2A, 3A, 4 and 5 having lot widths of 2.03 feet and proposed Lot 6 having a lot width of 2.02 feet. The applicant requested the lot width variance for the purpose of creating six single-family detached residential building lots. Proposed Lot 1A would have an area of 44,051 square feet, proposed Lot 2A would have an area of 21,771 square feet, proposed Lot 3A would have an area of 28,684 square feet, Lot 4 would have an area of 29,906 square feet, Lot 5 would have an area of 17,456 square feet and Lot 6 would have an area of 21,031 square feet. The Zoning Ordinance requires a minimum lot width of 80 feet. Staff was concerned that the development pattern of lots accessing public streets from a pipestem driveway was neither harmonious nor compatible with the surrounding community and the proposed development provided minimal protection of the flood plain where proposed house footprints were located the minimum distance allowed by the Zoning Ordinance from the flood plain.

Ms. Gibb noted that proposed development was located the minimum distance from the flood plain and asked staff to suggest a type of development they would support. Ms. Stanfield suggested a cluster development where the lots could be clustered in an area outside of the flood plain.

Mr. Pammel asked the applicant for information as to how the lots were created.

Steve Hundley, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He explained that he could not answer any questions regarding the creation of the lots because his company had not performed a title search. He stated that the property consisted of 6.7 acres and it was constricted based on the shape and the environmental constraint of the close proximity to the flood plain. He said the proposed subdivision would not adversely impact the adjacent development and proposed to preserve the existing mature vegetation both on the lots and along the adjacent property. He stated that the applicant proposed a condition to place a restrictive easement over the flood plain and had considered conveying the parcel to the County. He stated the proposed density was consistent with the adjacent development and allowing the continued use of the existing pipestem driveway would minimize disturbances to the site and allow the preservation of existing mature trees and existing vegetation.

Mr. Hart asked the applicant if the current owners were the same people who subdivided the property in the 1980's. Mr. Hundley replied that he could not answer that question as a title report had not been performed. Mr. Hart asked for clarification regarding the conveyance of the restrictive easement to the County. Mr. Hundley explained that the applicant had considered conveying the flood plain and Environmental Quality Corridor (EQC) area to the County in fee simple. Mr. Hart asked staff if the property would need to be readvertised if there was to be a conveyance. Susan Langdon, Chief, Special Permit and Variance Branch, replied there would need to be a readvertisement and staff would need to review the yard requirements.

Chairman DiGiulian called for speakers.

Ms. Langdon explained there was a citizen who would answer the Board's question regarding the 1980 subdivision of the lots.

Ann Nelson, no address given for the record, explained the lot was owned by her father who was deceased and he subdivided the property in 1985 and gave herself and her brother a lot.

Adrienne White, McLean Citizen's Association, came forward to speak in opposition. She said the Nelsons were good neighbors and the citizens regretted having to oppose the application. She suggested the

~ ~ ~ April 15, 2003, WILLIAM M. & ANN NELSON AND ANN. N. EVERETT, VC 2003-DR-016, continued from Page 386

Nelsons received bad advice regarding the best way to redevelop their property and said the citizen's looked forward to working with them on a better type of application. Ms. White contended that the application did not meet most of the standards for the granting of a variance and there were no extraordinary conditions associated with the size, shape or topographic condition of the property. She said the proposed application would increase the probability of flooding and create a traffic hazard with a new ingress/egress point on Davidson Road within close proximity to the existing public streets and very close to McLean High School. She said the use of the existing pipestem would not provide adequate turning radii for public safety and fire equipment.

Chris Larson, no address given, came forward to speak in opposition. He explained that he was speaking for the six neighbors whose homes bordered the south side of the property in question. He reiterated that the Nelsons have been good neighbors however he was in opposition of the application because of the potential for flooding. He said the additional homes would also add to the traffic in the area.

Mr. Hundley had no rebuttal.

Ms. Gibb asked the applicant the cost to rezone the property to PDH Cluster. Mr. Moesle, contract purchaser, replied that it was not possible to rezone the property to PDH.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he could not support the application because staff had identified several unresolved issues in the staff report and the property could be further developed differently than what was proposed.

Mr. Hart stated that the property was subdivided into three lots and allowed the development of three houses and the application would maximize the number of homes allowed on the current property. He said the proposed subdivision was not in character with the surrounding development.

Mr. Kelley moved to deny VC 2003-DR-016 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM M. & ANN NELSON AND ANN. N. EVERETT, VC 2003-DR-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into six lots with proposed Lots 2A, 3A, 4 and 5 having lot widths of 2.03 ft. and proposed Lot 6 having a lot width of 2.02 ft. Located at 1620, 1622, 1624 Davidson Rd. on approx. 3.74 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 30A, 30B & 30C. 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 15, 2003; and

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

1. The applicants are the owners of the land.
2. Staff identified several unresolved issues in the staff report.
3. The property can be redeveloped, and this way is not the right way to go about it.
4. Staff and the McLean Citizens' Association felt that some of the required standards for a variance were not met relating to hardship, the floodplain, EQC preservation and tree preservation.

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

~ ~ ~ April 15, 2003, WILLIAM M. & ANN NELSON AND ANN. N. EVERETT, VC 2003-DR-016, continued from Page 387

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 6-0. 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 April 23, 2003.

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~ ~ ~ April 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD, SPA 81-A-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-025 previously approved for a church and nursery school to permit building additions, site modifications and increase in land area. Located at 9350 Braddock Rd. and 4925 & 5001 Olley La. on approx. 10.65 ac. of land zoned R-1. Braddock District. Tax Map 69-4 ((1)) 6, 7 and 8.

This case was administratively moved to April 29, 2003.

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~ ~ ~ April 15, 2003, (Tape 1), Scheduled case of:

9:30 A.M. CLARA AND NED POFFENBERGER, A 2002-PR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and

~ ~ ~ April 15, 2003, CLARA AND NED POFFENBERGER, A 2002-PR-044, continued from Page 388

Environmental Services that the approval of a record plat for a minor lot line adjustment is in compliance with Zoning Ordinance provisions. Located at 8636 and 8638 Dogwood La. on approx. 1.42 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 29A and 30A (formerly identified as Lots 29 and 30). (Deferred from 3/4/03)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ned and Clara Poffenberger, 2933 Fairhill Road, Fairfax, Virginia, replied that it was.

Mr. Emeka, Senior Engineer, Department of Public Works and Environmental Services (DPWES), stated that the appeal was of a determination of the Department of Public Works and Environmental Services that the approval of a record plat for a minor lot line adjustment was in compliance with Zoning Ordinance provision. The appellant contended that the subject property lot line adjustment was an attempt to circumvent the purpose and intent of both the Zoning Ordinance and the minor lot line adjustment process. The subject plat had not created two buildable lots from one and Lots 29 and 30 were created on November 15, 1939, as a part of the County approval. There were two lots prior to the adjustment of the lot line and two lots after, and the adjustment would be in accordance with the Zoning Ordinance. The approval of the subject plat had not created any adverse impact on the flood plain and there was no grading proposed within the flood plain nor did the development of the property result in any change in the existing flood plain limit. The newly created Lots 29A and 30A had frontage on State maintained roads and each lot satisfied the minimum lot width requirement for the district. It was staff's position that the minor lot line adjustment was approved in accordance with the Zoning Ordinance.

Ned Poffenberger came forward and explained that he disagreed with DPWES because the minor lot line adjustment was not intended to be a developer's tool to subdivide lots but to be used by adjacent homeowners to resolve property issues between themselves. He said the lot line adjustment was not minor because 100 percent of the lot line had been adjusted and the proportions and dimensions of the two lots were totally altered. He stated that the lot line adjustment had created an outlot and submitted a photograph of the lots illustrating the area of the two lots that he considered to be an outlot. He stated that the purpose for the builder to move the lot line was to get a slight piece of land to front on Dogwood Lane. He said Dogwood Lane was a State maintained road and Lot 30A had approximately 30 feet of frontage on Dogwood Lane. Mr. Poffenberger maintained that the lot line adjustment created three lots instead of two, giving Lot 30A enough room to allow for the construction of a large home without impeding on the Resource Protection Area (RPA) line. He said the new arrangement of the lots provided a minimum of frontage for Lot 30A and it was contrary to the minimum lot width requirements of 150 feet for interior lots and he questioned whether the frontage equaled minimum lot width. He said the old lots had frontages of 60 feet and 260 feet and the new frontages were 295 feet and 25 feet for Lots 29A and 30A. He stated the lot width adjustment would increase the development density adjacent to an RPA which would increase run off and other associated points of development. He said the piecemeal process of the submission and the approval for the development of the property made the County's task of ensuring that the process included appropriate and applicable reviews and to ensure that the process included consideration of environmental factors impossible. He stated his belief that the lot line adjustment pushed the limits of the Zoning Ordinance regulation that prohibited or restricted the amount of fill and changes and contours within a drainage channel and altering the channel directly impacted his property because it was located downhill and adjacent to the property in question. Mr. Poffenberger proposed several different options instead of a lot line adjustment.

Ms. Gibb asked the appellant how large his property was. Mr. Poffenberger answered that his property consisted of a lot and a half. She asked the appellant what direction his home faced. Mr. Poffenberger replied that his front door faced south.

Mr. Hart explained that the Board had to go by the Ordinance to determine whether the determination of the DPWES was correct or incorrect and that determination technically complied with the Ordinance.

Mr. Hart asked staff if there was some form of appeal that the appellants could make if the new homes aggravated the drainage issue on their property. Mr. Emeka explained that under the new grading plan, the appellants' property would not be impacted by any drainage problems. He said if the appellants felt that there were drainage issues from the new development they would have to make a case to the County.

Mr. Hart asked if there would be another opportunity for the appellants to appeal the grading plan. Mr.

~ ~ ~ April 15, 2003, CLARA AND NED POFFENBERGER, A 2002-PR-044, continued from Page 389

Emeka replied that the appellants could appeal the grading plan to the Director of DPWES. Mr. Hart asked if a grading plan had been approved. Mr. Emeka replied that it was approved on January 30, 2003.

Bruce Nassimbeni, Chief, Site Review Division, explained the grading plan had been approved and the developer had provided a drainage inlet along the common property line that picked up the drainage channel and discharged it to the flood plain so it was bypassing the appellants' property. He said the appellants could appeal any decision of DPWES through the circuit court.

Chairman DiGiulian called for speakers.

Ken Sanders, attorney for the owners of the subject property, stated that he supported staff's position. He explained that the property owner had met with staff and taken a long time to determine the right thing to do to develop the property. He said a building permit had been issued for Lot 20 and a demolition permit had been issued for the house. He stated that the drainage issue was carefully examined by staff and it was required that a storm inlet pipe and structure be constructed which will facilitate any existing drainage problems.

Maggie Stehman, Deputy Zoning Administrator, explained that the two lots were legally created and the Zoning Ordinance allowed for a minor lot line adjustment.

Mr. Poffenberger explained that he had been trying to negotiate with the owner of the property in question and they had not gotten any response.

Chairman DiGiulian closed the public hearing.

Mr. Pammel explained the he worked for ten years in Loudon County on very similar provisions and boundary lot adjustments were done frequently to rearrange lot lines to get a better configuration of lots so the building envelope met all of the requirements of the Zoning Ordinance. The provision specifically stated that there would be no increase in the density of development. He said he felt that DPWES correctly interpreted the law. He said drainage was not a consideration and the issue was the law as it defined the minor lot line adjustment.

Mr. Pammel moved to uphold the determination of DPWES in appeal A 2002-PR-044. Mr. Hart seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote, and Mr. Ribble was absent from the meeting.

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~ ~ ~ April 15, 2003, (Tape 1), After Agenda Item:

Approval of October 15, 2002 Minutes

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

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~ ~ ~ April 15, 2003, (Tape 1), After Agenda Item:

Approval of Revised Plat  
Bahram Shariari  
VC 2002-PR-159

Mr. Pammel moved to approve the revised plat. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Kelley was not present for the vote, and Mr. Ribble was absent from the meeting.

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~ ~ ~ April 15, 2003, (Tape 1), After Agenda Item:

Approval of April 8, 2003 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Kelley was not present for the vote, and 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 10:48 a.m.

Minutes by: Lori M. Mallam

Approved on: September 14, 2004

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

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 22, 2003. The following Board Members were present: Chairman John DiGiulian; Robert Kelley; John Ribble; James Hart; James Pammel; and Paul Hammack. 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.

~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BRUCE F. DEAR, VC 2003-PR-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. and eave 0.5 ft. from side lot line. Located at 9234 Okla Dr. on approx. 22,478 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bruce F. Dear, 9234 Okla Drive, Fairfax, Virginia, replied that it was.

Lindsey Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition 1.5 feet from the side lot line and an eave 0.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet for the carport and 17 feet for the eave; therefore, variances of 13.5 feet and 6.5 feet were requested.

Mr. Dear presented the variance request as outlined in the statement of justification submitted with the application. He explained that he would like shelter for the family vehicles. Mr. Dear said the variance was the only alternative. He stated that the other side of the yard had a significant slope. Mr. Dear said moving the carport to the backyard would require tearing down at least one mature tree. He stated that the existing driveway was where the proposed carport was to be located.

Mr. Hammack asked the applicant if he considered locating the carport in the front of the house so it would be further from the side lot line. Mr. Dear stated that he considered moving the addition to the front, but could not come up with a proposal that would be harmonious to the existing and neighboring structures. He said they would be close to infringing on the front lot line if the addition was moved to the front of the house.

Mr. Hart asked the applicant if he considered having a one-car carport that had the two cars end to end. Mr. Dear stated that a single carport limited his flexibility to move the vehicles, and he would still have to request a variance.

Mr. Hart noted that another option would be to put the carport in the front of the house and turn it ninety degrees with a screen so that it would not meet the property line. Mr. Dear stated that he did consider other alternatives, but considering the style of the house, he felt that the current design was the most harmonious. He said any alternative would require a request for a variance.

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

Mr. Hammack moved to deny VC 2003-PR-022 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

BRUCE F. DEAR, VC 2003-PR-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. and eave 0.5 ft. from side lot line. Located at 9234 Okla Dr. on approx. 22,478 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 24. 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

~ ~ ~ April 22, 2003, BRUCE F. DEAR, VC 2003-PR-022, continued from Page 393

applicable State and County Codes and with the by-laws of 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 22, 2003; 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 Board that the standards have been met.
3. There is a topographical problem on the right side; however, this is too 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. 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 April 30, 2003.

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~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BONNIE GREENSPAN, VC 2003-MV-025 Appl. under Sect(s). 18-401 of the Zoning

~ ~ ~ April 22, 2003, BONNIE GREENSPAN, VC 2003-MV-025, continued from Page 394

Ordinance to permit construction of additions 25.0 and 25.1 ft. from front lot line of a corner lot. Located at 7922 Washington Ave. on approx. 21,405 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 28 and 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. Bonnie Greenspan, 7922 Washington Avenue, Alexandria, Virginia, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a one-story addition 25.1 feet from the front lot line and a second-story addition 25 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 35 feet in the R-2 Zoning District; therefore, variances of 9.9 feet and 10 feet were requested.

Ms. Greenspan presented the variance request as outlined in the statement of justification submitted with the application. Ms. Greenspan explained that the proposed project was in the existing footprint of the house. She stated that her house was grandfathered at 25 feet in the front yard. She said that the house was located on a triangular shaped lot. Ms. Greenspan stated that the existing structure on the ground floor could not be changed. She explained that the ground floor was old and poorly insulated and would be torn down. Ms. Greenspan said the extension on the second story came to the current line of the existing dwelling.

Mr. Hart asked staff if in 1951, at the time the existing dwelling was built, the location of the house was in accordance with the Zoning Ordinance requirements. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it was.

Mr. Hart stated that on the plat there was a 20-foot building total restriction line and asked if that had something to do with the Zoning Ordinance. Ms. Langdon replied that it did not.

Mr. Hart asked if the steps on the plat existed and stated that the steps appeared to be closer to the lot line than what the variance was asking for. Ms. Langdon stated that steps could extend into the minimum required yard. Ms. Greenspan stated that there were steps currently coming from the side door, but they would not be changed.

Ms. Greenspan said that she had a document signed by the affected neighbors stating that there were no objections to the variance.

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

Mr. Ribble moved to approve VC 2003-MV-025 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BONNIE GREENSPAN, VC 2003-MV-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 25.0 and 25.1 ft. from front lot line of a corner lot. Located at 7922 Washington Ave. on approx. 21,405 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 28 and 29. 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 22, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has a double front yard which causes the need for a variance.
3. The house and neighborhood are old and many people are improving their 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 the addition shown on the plat prepared by George M. O'Quinn of Dominion Surveyors, Inc., dated September 30, 2002, as revised through January 13, 2003, 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.

~ ~ ~ April 22, 2003, BONNIE GREENSPAN, VC 2003-MV-025, continued from Page 396

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 April 30, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. COLVIN RUN, L.L.C., VC 2003-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots with proposed Lots 2 and 3 having a lot width of 10.0 ft. and proposed Lot 4 having a lot width of 12.62 ft. and permit dwelling to remain 18.5 ft. from front lot line. Located at 10208 Colvin Run Rd. on approx. 6.0 ac. of land zoned R-1 and C-8. Dranesville District. Tax Map 12-4 ((1)) 33. (Admin moved from 4/8/03)

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 Kroll, Agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to subdivide one lot into four lots with proposed Lots 2 and 3 having a lot width of 10 feet and proposed Lot 4 having a lot width of 77.4 feet, where a minimum of 150 feet is required by Section 3-106 of the Zoning Ordinance, for the purpose of creating four single-family detached residential building lots. Lot 1 would have a lot area of 41,151 square feet; Lot 2 would have a lot area of 94,312 square feet; Lot 3 would have a lot area of 75,811 square feet; and Lot 4 would have a lot area of 50,033 square feet. The applicant also requested an existing dwelling on proposed Lot 1 to remain 18.5 feet from the front lot line. The application provided an opportunity to preserve the existing house which was historically significant and a very large oak tree.

Ms. Kroll presented the variance request as outlined in the statement of justification submitted with the application. She explained that the property was zoned R-1 and had approximately 340 feet of frontage on Colvin Run Road. Ms. Kroll said all the lots would be accessed by a shared driveway with one entrance from Colvin Run Road. She stated that the current home had been noted by the Great Falls Heritage and the Fairfax County History Commission as a historic resource that should be preserved. Ms. Kroll said that the C-8 portion of the property could not be used to meet the minimum lot area or lot frontage for residential uses on site. She stated that the owner had agreed to place a restriction on the portion of the property that was zoned C-8, concurring that the portion would not be developed with any uses other than residential. Ms. Kroll said the 65-inch oak tree located on the property was in good health, and the proposed house and driveway construction had been positioned to minimize any potential impact on the tree. She stated that the provision of the 18-foot wide pavement section for the common driveway would allow preservation of the tree. Ms. Kroll said the property was long and narrow in shape and had a creek along the northern property line. She said that 25 percent of the site was contained in flood plain and RPA limiting the developable area. She explained that geotechnical testing and engineering had been completed to determine the location of infiltration trenches on the individual lots. Ms. Kroll said sanitary sewer was not available to the homes, so drainfields had been provided on each lot.

Mr. Hart asked Ms. Kroll to explain the proposed trail easement. Ms. Kroll explained that Fairfax County requested a 12-foot trail easement to allow an earthen trail.

Mr. Hart asked Ms. Kroll if the sanitary sewer easement stopped at the property line of the subject property. Ms. Kroll stated that it did.

Mr. Hart asked staff if the trail easement conflicted with the conservation easement which prohibited removing vegetation. Ms. Stanfield replied that the applicant would have to work with the trust that held the easement.

Mr. Hart asked Ms. Kroll if they wanted to proceed with digging infiltration trenches. Ms. Kroll explained that they intended to do infiltration trenches to meet the BMP requirement. She said a waiver had been submitted for the detention component to DPWES, and they were using infiltration trenches to meet BMP

requirements and would expand the size of the trench to provide detention.

Mr. Hart stated that he was concerned that staff and DPWES would state that the trenches were not large enough or that they would need separate detention. He asked staff if another variance application would be needed. Ms. Langdon said that if a pond were to be provided and was not shown on the plat, the applicant would have to amend the variance.

Mr. Hart asked Ms. Kroll if they were willing to go ahead with the development conditions the way they were currently stated. Ms. Kroll replied that they were.

Mr. Hart asked Ms. Kroll if they would be opposed to a development condition about an ingress/egress easement. She stated that they would not.

Ms. Stanfield asked Mr. Hart if he wanted maintenance for the shared driveway included in the development conditions. Mr. Hart stated that his primary concern was ingress/egress.

Mr. Hart noted that one third of the new garage was located inside the drip line of the oak tree and asked Ms. Kroll how to reconcile the development condition concerning preservation of the oak tree. Ms. Kroll stated that they were going to be working with Urban Forestry to make the adjustment under the drip line.

Mr. Hart asked staff if an arborist would have the flexibility of stating whether or not the garage could be built under the drip line of the oak tree. Ms. Stanfield replied that the primary task was to construct a fence under the drip line to protect the tree. She stated that when construction commenced, they would work with Urban Forestry in brainstorming a solution for protecting the tree.

Mr. Hart noted that the house was closer to the road than the new garage and that the arborist could recommend moving the garage closer to the road to protect the tree. He asked staff if Condition 3 allowed the applicant to place the garage closer to the road. Ms. Stanfield stated that the garage could not be moved closer to the road.

Mr. Hart asked staff, if the arborist approved the location of the garage, could it be built partially under the tree. Ms. Stanfield explained that if there were methods implemented to protect the tree, the garage could be built where it was planned.

Mr. Hart noted that the widening of the road in front of the house would be an issue at the time the site plan was reviewed. He asked staff if there was a chance that the road could be required to be widened. Ms. Stanfield stated that they could request the road to be widened, and the request would be sent to the Department of Transportation.

Ms. Kroll stated that they had met with the Department of Public Works and Environmental Services, Site Review, to discuss the widening of the road, and they felt that no additional dedication would be required in the approval of the subdivision project.

Mr. Hart asked if the new RPA maps changed anything with respect to the houses and infiltration trenches. Ms. Kroll stated that she had not seen the new maps, but it was the intent that the flood limit continue to be the RPA boundary on the property.

Mr. Hart asked Ms. Kroll if the pipes for the septic field on Lot 3 were under the driveway. Ms. Kroll stated that they were and would be encased in concrete.

Mr. Hart asked Ms. Kroll if the garages on Lots 2 and 3 were side load garages. Ms. Kroll stated that they were.

Mr. Pammel asked Ms. Kroll what the nearest availability was for sanitary sewer. Ms. Kroll said sanitary sewer was available on the opposite side of Colvin Run Road; however, it was not deep enough to make a connection.

Mr. Pammel asked if there was a possibility of sanitary sewer at the rear of the property. Ms. Kroll replied

~ ~ ~ April 22, 2003, COLVIN RUN, L.L.C., VC 2003-DR-018, continued from Page 398

that there was no sanitary sewer on the north side of Colvin Run Road.

Mr. Pammel asked Ms. Kroll if encasing the pipes for the septic field in concrete would be adequate protection from heavy machinery passing over the driveway. John Sekus, owner, explained that a conduit protected the pipe from any damage.

Chairman DiGiulian called for speakers.

Karen Weshburn, Fairfax County History Commission, came forward to speak in favor of the variance. She explained that Colvin Run Road was an important historic resource in the Great Falls area. Ms. Weshburn said the plans submitted by Mr. Sekus were the best preservation plans they could ask for. She stated that the variance utilized the land and had minimal impact on the historic resources. Ms. Weshburn requested approval of the variance.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approved VC 2003-DR-018 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COLVIN RUN, L.L.C., VC 2003-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into four lots with proposed Lots 2 and 3 having a lot width of 10.0 ft. and proposed Lot 4 having a lot width of 12.62 ft.(AMENDED TO 77.4 FEET) and permit dwelling to remain 18.5 ft. from front lot line. Located at 10208 Colvin Run Rd. on approx. 6.0 ac. of land zoned R-1 and C-8. Dranesville District. Tax Map 12-4 ((1)) 33. (Admin moved from 4/8/03) 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 22, 2003; 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 criteria for the granting of a variance.
3. The lot has an unusual shape.
4. The variance meets the criteria that it is compatible with the Comprehensive Plan.

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

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

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

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

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

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

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

- 1. This variance is approved for a variance to the minimum lot width and for an existing dwelling to remain 18.5 feet from the front lot line, as shown on the plat prepared by Charles E. Powell, dated March 14, 2002, as revised through April 11, 2003. 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. Within 30 days of the final approval of this variance request, and prior to any land disturbing activity on site, the applicant shall employ an arborist to prepare a condition analysis for the 65 inch white oak tree. Tree preservation recommendations for this tree provided by the arborist shall be implemented immediately to ensure that the oak tree is adequately protected before, during and after construction, as determined in conjunction with the Urban Forestry Division.
- 3. Prior to any land disturbing activity, both a grading plan and a tree preservation plan showing the improvements on proposed Lots 1, 2, 3 and 4 shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Urban Forestry Division, for review and approval. The plans shall depict preservation of the 65 inch white oak tree located on proposed Lot 1, trees located in the floodplain and in the southern portion of the site, where mature trees are located, as determined feasible by the Urban Forester, and the limits of clearing and grading which protect the trees. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forestry Division, a pre-construction conference shall be held on site between DPWES and representatives of the applicant to include the construction site superintendent responsible for 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. All 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.

All trees and tree save areas shown to be preserved on the tree preservation plan shall be protected by tree protection fence placed at the drip line. Tree protection fencing consisting of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart shall be erected at the limits of clearing and grading.

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. The installation of tree protection fence shall be performed under the



~ ~ ~ April 22, 2003, COLVIN RUN, L.L.C., VC 2003-DR-018, continued from Page 400

supervision of a certified arborist. Prior to the commencement of any clearing, grading, or demolition activities, the projects certified arborist shall verify in writing that the tree protection fence has been properly installed. Such tree fencing shall be installed around the 65 inch white oak tree immediately upon approval of the variance application.

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 the Department of Public Works and Environmental Services (DPWES). A written disclosure shall be made to contact purchasers prior to entering into a contract of sale and shall be placed in the purchase contract and in the deed for each lot and recorded among the land records of Fairfax County which:
  - Notifies the landowner of the existence and maintenance responsibility for rain gardens if located on the lots; and,
  - Sets forth maintenance standards for the rain gardens as outlined in Attachment A.
5. Areas located within the floodplain, as shown on the variance plat, shall be placed within a restrictive easement, in a form approved by the County Attorney, recorded among the Fairfax County land records to the benefit of the Northern Virginia Conservation. The easement shall restrict the removal of any trees that are not dead, dying or diseased, and the installation of any structures other than privacy fences. A written disclosure shall be made to contract purchasers prior to entering into a contract of sale and shall be placed in the purchase contract and in the deed for each lot and recorded among the land records of Fairfax County.
6. Prior to any land disturbing activities, the applicant shall contact the Fairfax County Park Authority County Archeologist and shall grant the County Archeologist permission to enter the subject property to perform a Phase 1 archeological survey, a Phase 2 assessment and/or a Phase 3 data recovery of any potentially significant features discovered during Phase 1.
7. The existing house on proposed Lot 1 shall be retained as shown on the variance plat. The proposed addition and breezeway attachment to the dwelling shall be reviewed and approved by the Fairfax County Architectural Review Board prior to commencement of construction.
8. The portion of Proposed Lot 4 zoned C-8 shall only be used for residential uses as permitted in the Zoning Ordinance.
9. A written disclosure shall be made to contact purchasers prior to entering into a contract of sale and shall be placed in the purchase contract and in the deed for each lot and recorded among the land records of Fairfax County which discloses the location and maintenance requirements of the drainfields for each lot.
10. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 1, 2, 3, and 4 over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement among the property owners of the proposed Lots to be recorded in the land records in a form approved by the County Attorney at the time of subdivision plat approval for the Application Property. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.
11. The final location of the proposed garage on Lot 1 shall be determined in consultation with the Urban Forester to ensure the preservation of the 65 inch oak, but shall not be closer than 25 feet from the eastern lot line.

Pursuant 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.

~ ~ ~ April 22, 2003, COLVIN RUN, L.L.C., VC 2003-DR-018, continued from Page 401

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 April 30, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. FRANCO NETO, VC 2003-DR-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.0 ft. from side lot line. Located at 7006 Southridge Dr. on approx. 13,963 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((19)) 98.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Franco Neto, 7006 Southridge Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 9.0 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet in the R-3 district; therefore, a variance of 3.0 feet was requested for the garage.

Mr. Neto presented the variance request as outlined in the statement of justification submitted with the application. He stated that he was applying for the variance because of the narrowness of the existing carport. Mr. Neto explained that the existing structure was over 40 years old and was deteriorating. He said a petition was contained with the application signed by the affected neighbors in favor of the variance.

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

Mr. Hart moved to approved VC 2003-DR-021 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

FRANCO NETO, VC 2003-DR-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.0 ft. from side lot line. Located at 7006 Southridge Dr. on approx. 13,963 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((19)) 98. 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 22, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a variance.
3. The lot has an odd shape.
4. The lot has an existing storm drainage easement on the right side of the lot.
5. The variance is minimal and consistent with other variances granted in the area.
6. The proposed garage will not be significantly different in its impact than the existing carport.
7. The garage will be an improvement on the lot.

~ ~ ~ April 22, 2003, FRANCO NETO, VC 2003-DR-021, continued from Page 402

8. The garage is consistent with a garage built on a similar lot across the street from 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 L. Carl Gardner, dated November 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 5-0. Mr. Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

~ ~ ~ April 22, 2003, FRANCO NETO, VC 2003-DR-021, continued from Page 403

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 30, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT HOLDEN AND E. LANDON HOLDEN, VC 2003-MV-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line. Located at 2000 Summit Terr. on approx. 12,000 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (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. Landon Holden, 2000 Summit Terrace, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition to be located 7.8 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet in the R-4 district; therefore, a variance of 2.2 feet was requested.

Ms. Holden presented the variance request as outlined in the statement of justification submitted with the application. She explained that the proposed addition would continue in the line of the original house. Ms. Holden stated that they were not encroaching further on the side lot line. She said the extension would be a total of 13.6 feet.

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

Mr. Kelley moved to approved VC 2003-MV-023 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT HOLDEN AND E. LANDON HOLDEN, VC 2003-MV-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line. Located at 2000 Summit Terr. on approx. 12,000 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (5) 1. 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 22, 2003; and

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

1. The applicants are the owners of the land.
2. There have been several variances in the subdivision.
3. The addition is a second story addition and does not encroach any closer to the property line.
4. The applicant has met all 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.

~ ~ ~ April 22, 2003, SCOTT HOLDEN AND E. LANDON HOLDEN, VC 2003-MV-023, continued from Page 404

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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. O'Quinn, dated November 13, 2002, as revised through January 24, 2003, 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. Ribble was not present for the vote. 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 April 30, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RODNEY & STACEY ROYSTON, VC 2002-LE-200 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. and eave 13.9 ft. from side lot line. Located at 6317 Colette Dr. on approx. 21,847 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((6)) (3) 12. (Moved from 3/18/03 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. Rodney Royston, 6317 Colette Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 14.1 feet from a side lot line with an eave located 13.9 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet in the R-1 District; therefore, a variance of 5.9 feet was requested. Eaves may be located 3.0 feet into a minimum required yard; therefore, a variance of 3.1 feet was requested for the eave.

Mr. Royston presented the variance request as outlined in the statement of justification submitted with the application. He stated that he was requesting the variance to construct a garage that would be large enough to fit two cars.

Mr. Hammack noted that the plat submitted proposed a second-story addition to the house and asked the applicant if the addition was to be constructed. Mr. Royston stated that the addition would not be built at this time.

Mr. Hammack noted that the proposed garage was 45 feet long, which was twice as long as the average garage. He asked the applicant what the purpose of the size of the garage was. Mr. Royston stated that he collected cars.

Mr. Hammack asked the applicant if the structure would be used only as a garage. Mr. Royston stated that a small portion of the garage would be used for storage of lawn mowers and other items.

Mr. Hammack asked the applicant if he had discussed the variance request with the property owner to the immediate left. Mr. Royston stated that he had.

Mr. Hammack asked the applicant if the owner of the property approved of the variance. Mr. Royston stated that his neighbor was not in opposition to the structure.

Mr. Hammack asked the applicant if there was another place on the property that the garage could be constructed. Mr. Royston stated that there were other areas to construct the garage, but the garage would be detached.

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

Mr. Hammack moved to deny VC 2002-LE-200 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RODNEY & STACEY ROYSTON, VC 2002-LE-200 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. and eave 13.9 ft. from side lot line. Located at 6317 Colette Dr. on approx. 21,847 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((6)) (3) 12. (Moved from 3/18/03 for notices) 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 22, 2003;

~ ~ ~ April 22, 2003, RODNEY & STACEY ROYSTON, VC 2002-LE-200, continued from Page 406

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 met the required standards for a variance.
3. The size of the garage is for convenience.
4. There is adequate space on the lot to construct the garage without a variance.
5. The garage is similar in size to the dwelling.

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 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 April 30, 2003.

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~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LUCK STONE CORPORATION, SPA 81-S-064-9 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 previously approved for stone quarrying, crushing, sales and ancillary uses to permit renewal. Located at 15717 Lee Hwy. on approx. 212.26 ac. of

~ ~ ~ April 22, 2003, LUCK STONE CORPORATION, SPA 81-S-064-9, continued from Page 407

land zoned R-C, NR and WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13 - 15, 17 pt., 33A, 38 pt., 39 pt. and 64-1 ((4)) 7A. (Admin moved from 3/18/03) (continued from 4/1/03)

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

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. She stated that the applicant and staff had been working together to come to a solution on Development Condition 5. Ms. Stanfield explained that the development condition required replanting. She stated that the applicant had done some planting in the area described; however, an inspection done by Urban Forestry revealed that the planting was not satisfactory at the time. She stated that she and Mr. Spence had come up with a modification to Development Condition 5 which would provide the applicant with 30 days to meet the condition.

Mr. Spence states that they had no objections to the revised development conditions.

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

Mr. Pammel moved to approve SPA 81-S-064-9 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

LUCK STONE CORPORATION, SPA 81-S-064-9 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 previously approved for stone quarrying, crushing, sales and ancillary uses to permit renewal. Located at 15717 Lee Hwy. on approx. 212.26 ac. of land zoned R-C, NR and WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13 - 15, 17 pt., 33A, 38 pt., 39 pt. and 64-1 ((4)) 7A. (Admin moved from 3/18/03) (continued from 4/1/03) 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 22, 2003; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-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, 15717 Lee Highway (212.26 acres), and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the property without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the



~ ~ ~ April 22, 2003, LUCK STONE CORPORATION, SPA 81-S-064-9, continued from Page 408

special permit plat prepared by Patton Harris Rust and Associates, dated November 15, 2002, as revised through March 19, 2003, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. All landscaping and screening required in previous approvals of this use shall be maintained as follows:
  - a. Landscaping and screening shall be maintained in accordance with the landscape plan approved in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned and used properties and Lee Highway.
  - b. The vegetation between the access road to the asphalt plant and the maintenance building shall be maintained at the level of Transitional Screening 3.
  - c. To ensure quarry operations on the north side of Lee Highway are adequately screened, all existing vegetation south of the existing quarry pit shall be preserved and limits of clearing and grading shall not extend south of the existing quarry pit.
  - d. The shade trees adjacent to the entrance on the south side of Route 29 and evergreen trees on the eastern side of the entrance shall be maintained in a healthy condition and any dead or dying trees shall be replaced as needed as determined by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES). The trees shall be a minimum of 6.0 feet in height and shall serve to soften the visual impact of the use. The number and type of any replacement trees shall be determined by the Urban Forestry Division.
  - e. The following screening and landscaping shall be provided on the berm located along the periphery of the expansion area:
    - For the 400 foot long portion of the berm which directly abuts Bull Run Post Office Road, two (2) rows of staggered deciduous and evergreen trees planted ten feet on center shall be provided.
    - The remainder of the berm shall be landscaped with natural grasses and with seedlings of a species and density to be determined by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES). To ensure compatibility with surrounding low density development, emphasis shall be placed on using native species to fulfill this requirement.
  - f. In order to screen the quarry from Lee Highway, all existing vegetation which lies north of the ultimate right-of-way line and associated improvements to Lee Highway shall be preserved to the maximum extent possible.
  - g. Any dead, dying and/or hazardous vegetation shall be replaced. Number, size and species shall be as determined by the Urban Forestry Division.
5. Within a period of time not to exceed thirty (30) days from the final date of approval for SPA 81-C-093-9, a portion of the screening buffer located on the western corner adjoining the south side of Lee Highway, shall be cleared of all noxious vines, undergrowth and exotic trees. This area, as determined in consultation with the Urban Forestry Division, shall be replanted with Austrian Pines to equal one tree per 10 linear feet and eastern red cedars to equal one tree per five linear feet. These trees plantings shall be a minimum height of six feet at the time of planting.
6. The existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway shall be designed to release runoff from the site in accordance with Best Management Practice (BMP) standards as determined by DPWES. The agreements reflected in the letter of September 25, 1992, and

DPWES approved modifications thereof, may be used to fulfill this requirement as may be acceptable to DPWES.

7. The sales, loading and hauling of crushed stone shall be permitted 24 hours per day for not more than 100 nights per year, Monday through Saturday. All activities between the hours of 6:00 p.m. and 7:00 a.m. associated with this use shall be confined to the south side of Lee Highway.
8. Strobe lights shall be used in place of back-up beepers on loaders during nighttime operating hours.
9. To accommodate the planned widening of Lee Highway, right-of-way shall be conveyed to the Board of Supervisors in a manner which provides a minimum uniform width of 112 feet along the site's entire frontage of Lee Highway. This right-of-way shall be dedicated in fee simple at such time as a road project requiring the right-of-way is designed and funded the Virginia Department of Transportation (VDOT) or Fairfax County. Based on final design of future improvements to Lee Highway or the design and /or implementation of public improvements on adjoining property to the west, the requirement for right-of-way dedication may be increased as may be shown to be necessary by the Department of Transportation in an amount not to exceed 158 feet.
10. There shall be no access to the northern section of the quarry from Route 28. All access for excavation and/or parking of vehicles for on-site and/or off-site vehicles shall be by the tunnel under Route 29, Lee Highway.
11. The applicant shall screen the recyclable concrete coming to the site from mud, dirt, trash and other construction debris. No leads shall be accepted if found to be contaminated with the aforementioned material.
12. Stockpiling and recycling of concrete on this site shall be approved for spent concrete obtained only from customers of the quarry and hauled by the same vehicles which deliver stone products to the customer.
13. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luck Stone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.
14. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC. Grass located between the pond in the EQC and the picnic pavilion shall not be mowed, except for the area for boat and fishing access.
15. Berms shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains.
16. The design of the berm along the northern lot line on the north side of Route 29, Lee Highway shall be maintained so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site.
17. In accordance with the provisions of Sect. 8-103 of the Zoning Ordinance, a bond of \$2,000 per acre for the 134 unrestored acres shall be contained for the duration of this mining operation. Upon amendment or renewal of this application any agreements or performance guarantees shall be subject to review and approval by the Bonds and Agreements Branch, DPWES.
18. Blasting vibrations shall be limited to a maximum resultant particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.

19. Blasting shall be regulated as follows:

Millisecond delay caps or the equivalent shall be used in all blasting operations, with no blast to exceed 15,000 pounds. No single millisecond delay charge shall be loaded in excess of 850 pounds. Blasting within 400 feet of any non-company owned residence shall conform to the standard blasting operation procedure as approved with this use permit.

In addition to the above referenced blasting procedures, blasts 200 feet or closer to the Trans Continental Pipeline shall be subject to the following additional provisions:

Trans Continental shall be notified prior to any blast occurring at a point 200 feet or closer to the pipeline.

Each such notice shall be given at least twenty-four hours prior to the blast and shall be provided to individual(s) as designated by Trans Continental.

Any blast within 200 feet of the pipeline shall adhere to the following minimum delays.

17 milliseconds between decks in a hole.

25 milliseconds between holes.

The following information shall be forwarded to Trans Continental following each blast that occurs within 200 of the pipeline:

A diagram or pattern of the shop;

Maximum pounds per delay of explosives in the shop;

Depth of the holes in the shop;

Type of explosive used;

Type of delays used;

Seismography reading and location;

Blasting records for the entire site shall be made available to the County.

20. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.
21. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.
22. The Zoning Enforcement Branch of the Zoning Administration Division, Department of Planning and Zoning, shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.
23. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.
24. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.
25. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.
26. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday.
27. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday, only.
28. All blasting material shall be handled and stored in accordance with standards and regulations established by the State Mining Safety and Health Administration or other appropriate agencies.
29. There shall be no work performed other than sales of materials or maintenance activities of facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m., except as qualified by

~ ~ ~ April 22, 2003, LUCK STONE CORPORATION, SPA 81-S-064-9, continued from Page 411

Condition #7. There shall be no work on Sundays.

30. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.
31. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.
32. Traffic control practice practices shall be detailed and rigidly enforced to ensure that the public roads in the immediate vicinity of the blast are closed to all traffic during the blast when blasting within 600 feet of a public road. For all other blasts, public roads may be blocked for blasting when best blasting practices deem necessary.
33. The Zoning Administrator or designated agent shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.
34. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing and that shown on the Special Permit Plat may be used to fulfill this requirement.
35. Water quality monitoring reports shall be provided by the applicant on an annual basis to the Department of Planning and Zoning. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients and alkalinity.
36. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.
37. The water/oil separator system shall be a totally closed system. There shall be no discharges of water, oil or other waste from the facility. Sludge materials which are removed in the cleaning of the facility shall be disposed of in accordance with applicable local, state and federal requirements.
38. The applicant shall ensure that the siltation pond located on the south side of Route 29, Lee Highway, is functioning in accordance with Best Management Practices (BMPs) standards, as determined by DPWES.
39. The emergency spill response and containment plan developed by the applicant to address accidental spills of any hazardous substances stored on the premises shall be submitted to and approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.
40. Special Permit Amendment SPA 81-S-064-9 is granted for a period of five (5) years from the date of approval, with annual review by the Zoning Administrator or designee in accordance with Section 8-104 of the Zoning Ordinance.

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

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 April 30, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ April 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. ROBINETTE, VC 2002-HM-188 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

~ ~ ~ April 22, 2003, JAMES M. ROBINETTE, VC 2002-HM-188, continued from Page 412

of 20.30 ft. and permit dwelling 17.3 ft. from front lot line. Located at 1847 Hunter Mill Rd. on approx. 2.01 ac. of land zoned R-1. Hunter Mill District. Tax Map 27-2 ((1)) 5. (def. from 2/11/03) (cont'd from 2/25/03)(moved from 4/8/03)

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. Kendricks Sanders, Agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. Ms. Stanfield explained that the case had been deferred to address concerns of the local community. She stated that the applicant had agreed to several changes to the proposed development conditions.

Mr. Sanders presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the proposed variance would create two lots of over 40,000 feet each. Mr. Sanders stated that there was an old home on the subject property. He explained that they were not proposing a subdivision of the lot, but were seeking a variance to a requirement of the Zoning Ordinance for lot frontage, which would permit an application for the subdivision of the property. He stated that there was a large barn or garage on the rear of the lot. Mr. Sanders stated that the house was presently using a septic drainfield. Mr. Sanders said the lot was "L" shaped. He stated that the property had 213 feet of frontage on Hunter Mill Road and missed being a by-right development by approximately 80 feet. Mr. Sanders explained that since the neighborhood surrounding the property had been developed into R-1 Cluster, it was time to permit reasonable use of the property. He stated that the plan for the site showed retention for the existing home and construction of a new home on Lot 2. Mr. Sanders said the plan stated that the proposed house would be 9,600 square feet, and that was incorrect. He explained that the house would be 4,000 to 5,000 square feet. Mr. Sanders said the houses would access Hunter Mill Road with a shared driveway. He stated that the new home would have a septic drainfield. Mr. Sanders explained that there was a 10-foot sanitary sewer easement in the back of Lot 2, and the easement was 10 feet off the property line. Mr. Sanders said if they could obtain a 10-foot sewer easement, they could put the house on sanitary sewer. He stated that to the rear of the property was Lot 94. Mr. Sanders explained that the new home on Lot 2 would be 120 to 130 feet from Lot 94. He said that the owners of Lot 94 were concerned with drainage. Mr. Sanders stated that their engineers did a report and there was an existing problem with the County easement. He said that the inlet was inadequate, but could be remedied by another easement on Lot 2 through an easement on an existing pipe, or enlarging the existing inlet on Lot 94. Mr. Sanders noted that in the new conditions the drainage problem would be corrected if an easement for an underground pipe was provided from the existing inlet to their property. He said with exception to the Lee property, there were substantial trees on the border of the property which would remain. Mr. Sanders stated that the Lee property had the least screening, and more trees could be planted as a remedy. He noted that they had an odd-shaped lot that was oddly situated. Mr. Sanders said the property was in a community where other pipe stem lots existed. He explained that there were lots that were substantially larger than what was proposed.

Mr. Hammack asked the applicant if he had seen the letter and photographs submitted by the Wermans. Mr. Sanders stated that he had not.

Mr. Hammack showed the photographs to Mr. Sanders. Mr. Sanders stated that the trees in question would not be removed. He explained that the trees lining the Nelson property entirely blocked the Nelson home from view. Mr. Sanders stated that was the same for the Werman property. He said their drainage was towards the inlet of the Nelson property and that they did not drain towards the Lees or the Rosenthals. Mr. Sanders said there was an existing barn on the property that would be removed.

Mr. Hart asked Mr. Sanders if the reason he was asking for an easement on the Nelson's property was to correct the existing problem. Mr. Sanders said that was correct.

Mr. Hart asked Mr. Sanders what would happen to his storm water if the Nelsons refused an easement. Mr. Sanders stated that they had not yet applied for subdivision; he had to have the house designed; they had to do the storm water calculations; they had to do a grading plan; and they had to go to the forester. He said there were various things they could do for storm water.

Mr. Hart asked staff if the applicant had to disturb an area they were not supposed to, would they have to amend their variance. Susan Langdon, Chief, Special Permit and Variance Branch, replied that they would. She stated that if it was a minor engineering change, it could be done without amending the variance.

Mr. Hart asked Mr. Sanders if the shared driveway on the property line would lead to the new house. Mr. Sanders stated that was correct.

Mr. Hart asked Mr. Sanders if the property line was in the middle of the driveway. Mr. Sanders stated that it was.

Mr. Hart asked Mr. Sanders if there was separation between the driveway and the Rosenthals. Mr. Sanders stated that there were limits of clearing inside the line.

Mr. Hart asked Mr. Sanders if they would object to an ingress/egress easement that dealt with the common driveway. Mr. Hart noted that Development Condition 7 provided that storm drainage easements be required. He said he wanted to know if the applicant was going to be responsible for paying for the engineer and the lawyer. Mr. Sanders explained that they would not pay for the land, but they would pay for the paperwork. He said the land would be the developer's cost.

Mr. Hart asked Mr. Sanders if the new development condition about supplemental planting that stated "prior to occupancy" could state "prior to the issuance of a residential use permit." Mr. Sanders agreed that it could be changed.

Mr. Hart asked staff if they had an objection to the development condition. Ms. Stanfield stated that they did not.

Mr. Hart asked Mr. Sanders if he had seen the letter from the Hunter Mill Defense League. Mr. Sanders stated that he had not.

Mr. Hart explained that the Board had received a letter in opposition related to Hunter Mill Road and the road widening. Mr. Hart said staff was no longer requiring a 45-foot dedication, and the road would be left in its current state.

Mr. Sanders stated that there was dedication on the plat and it was 38 feet. He said 45 feet would take too much of the front yard of the existing home.

Mr. Hart asked Mr. Sanders if it was true that they were not constructing, just dedicating, 38.5 feet. Mr. Sanders stated that was correct. He said no one wanted anything constructed.

Mr. Hart stated that he thought that the issues involving Hunter Mill Road were resolved and did not understand what the remaining issues were. Ms. Stanfield explained that the letter from Hunter Mill Defense League referenced that there was no official justification for the County asking for an expansion of the 38.5 feet, and that had been taken out of the current development conditions.

Mr. Hart stated that the letter was dated April 22, 2003.

Mr. Pammel noted that there was a large maple tree in the front of the house. Mr. Sanders stated that he was not aware of the maple tree.

Mr. Pammel stated that he believed that the maple tree was located in the area which was to be dedicated. He said the tree would be better located in an area that would be under the control of VDOT for removal.

Chairman DiGiulian called for speakers.

Johanne Werman, Lot 102, came forward to speak in opposition to the variance. She stated that she had not been well informed of the details of the variance. She explained that she was concerned with the size of the footprint on the plat and would like it to be changed. She stated that the clearing of trees shown on the plat removed all of the trees on her property line. Ms. Werman said if the variance was approved, she wanted a development condition that stated that she would have a 50-foot natural buffer with no disturbance to the existing vegetation. She stated that supplemental landscaping should be offered to provide screening of the new home. Ms. Werman said she was concerned about drainage. She stated that the water runoff came directly from the Robinette property. She explained that there was more clearing of trees than what

~ ~ ~ April 22, 2003, JAMES M. ROBINETTE, VC 2002-HM-188, continued from Page 414

was originally proposed.

Mr. Hart asked Ms. Werman if she would rather have the drainage inlet fixed with a new pipe or leave it in its current state. Ms. Werman stated that the problem needed to be resolved and she felt that leaving the trees would help the problem. She said the revised plan showed more clearing.

Mr. Hart asked Ms. Werman if she would consider allowing the builders to plant bushes or trees on her side of the lot line. Ms. Werman stated that she was not sure. She said currently, because of the foliage, she could not see the Robinette's property, and she did not want to see all of the existing trees gone.

Mr. Hart asked staff how the plat that showed the new pipe and the removal of a corner of trees related to the development conditions. Ms. Langdon stated that the revised plat was significantly different than the plat they had received. She said that the plat they had did not show a septic field.

Ms. Werman explained that the engineering report was referencing only Lot 94. She said it was well known that her property also had water runoff problems.

Mr. Pammel asked Ms. Werman how long she had lived in the current location. She replied that she had lived there nine and a half years.

Mr. Pammel asked Ms. Werman if she was in her home prior to the development of the adjacent property by Toll Brothers. She stated that was correct.

Mr. Pammel asked Ms. Werman if the drainage problem occurred before the development of the adjacent property. Ms. Werman stated that they had always had a drainage problem even before the construction of the adjacent property. She said the drainage problem became worse after the construction.

Mr. Pammel explained that if the problem with drainage persisted, Ms. Werman would lose all of her trees regardless. He said the developer was going to eliminate the ponding, and that would improve the quality of the trees.

Michael Lee, Lot 9, came forward to speak in opposition to the variance. He explained that he was concerned with possible drainage problems that the new structure could cause. Mr. Lee stated that he assumed that the current house on the property would be torn down to build a new house. He stated that he wanted development conditions for the possibility of a second house being built. Mr. Lee explained that he had never been notified of any public hearings.

Mr. Pammel explained to Mr. Lee that granting a sanitary sewer easement would greatly improve his drainage problem. Mr. Pammel asked Mr. Lee if he would be willing to grant the easement. Mr. Lee stated that he would like to be better informed before making a decision.

Mr. Pammel explained that if sanitary sewer was granted, the trees would remain.

Chairman DiGiulian noted that the stake shown in a photograph submitted by Mr. Lee showed a control point.

Mr. Nelson, Lot 94, came forward to speak in opposition to the variance. He explained that he was concerned about drainage problems that could occur with new construction. Mr. Nelson stated that many trees on his property line would be removed when the construction occurred. He said with previous construction on other lots, there were severe drainage problems. Mr. Nelson stated that he would like to know what type of landscaping would be done. He stated that he was concerned about drainage problems if a second house was constructed.

Mr. Sanders stated, in his rebuttal, that the drainage point was on the Nelson property. He explained that the topography prevented drainage on the Lee Property. Mr. Sanders said the land had not been surveyed, and the architectural plans had not been drawn. He said if sanitary sewer was granted, the trees behind the new home would remain. Mr. Sanders stated that the Wermans' drainage problems were pre-existing. He stated that the Wermans could be added to the supplemental landscaping condition if warranted.

~ ~ ~ April 22, 2003, JAMES M. ROBINETTE, VC 2002-HM-188, continued from Page 415

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on VC 2002-HM-188 to June 17, 2003, at 9:00 a.m. He said there were several issues regarding drainage, road dedication, the ingress/egress easement, the location of the driveway, the sewer easement, supplemental tree planting, tree preservation, and the size and location of the proposed dwelling that needed clarification. He requested additional information be gathered regarding any historical significance of the 1909 house. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Ribble commented that the notice of the hearing sent by certified mail to Mr. Lee, which Mr. Lee had stated he had not received, had been returned to the County with notations on the envelope indicating that notification of the attempt to deliver had been made, but the letter had not been claimed.

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~ ~ ~ April 22, 2003, (Tape 3), Scheduled case of:

9:30 A.M. OLD TOWN HOLDINGS LLC, A 2003-MV-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services not to approve Service Drive Waiver #024229. Located on the S. side of Richmond Hwy., approx. 600 ft. N.E. of its intersection with Quander Rd. on approx. 6.66 ac. of land zoned C-8. Mt. Vernon District. Tax Map 83-3 ((1)) 56 and 56A. (Concurrent with A 2003-MV-007).

9:30 A.M. OLD TOWN HOLDINGS LLC, A 2003-MV-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Department of Public Works and Environmental Services not to approve Frontage Improvements Waiver #024228. Located on the S. side of Richmond Hwy., approx. 600 ft. N.E. of its intersection with Quander Rd. on approx. 6.66 ac. of land zoned C-8. Mt. Vernon District. Tax Map 83-3 ((1)) 56 and 56A. (Concurrent with A 2003-MV-006).

Chairman DiGiulian noted that A 2003-MV-006 and A 2003-MV-007 had been withdrawn.

Mr. Pammel moved to accept the withdrawals of A 2003-MV-006 and A 2003-MV-007. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 22, 2003, (Tape 3), After Agenda Item:

Approval of July 9, 2002 and July 16, 2002 Minutes

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

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~ ~ ~ April 22, 2003, (Tape 3), After Agenda Item:

Request for Additional Time  
Brenda Luwis and Satyendra Shrivastava, VC 98-D-008

Mr. Pammel moved to approve one year of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was April 13, 2004.

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~ ~ ~ April 22, 2003, (Tape 3), After Agenda Item:

Request for Additional Time  
Holy Spirit Lutheran Church, SP 95-S-050

Mr. Pammel moved to approve 30 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was October 10, 2005.

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~ ~ ~ April 22, 2003, (Tape 3), After Agenda Item:

Request for Additional Time  
Korean Central Presbyterian Church, SPA 83-P-057-3

Mr. Hart and Mr. Pammel noted that letters had been received regarding concerns about "No Parking" signs, tires, hydrostatic pressure problems in a neighboring property, and other issues that the applicant needed to address.

Mr. Pammel moved to approve six months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was September 8, 2003.

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~ ~ ~ April 22, 2003, (Tape 3), After Agenda Item:

Request for Intent to Defer  
Trustees of the Church of the Good Shepherd, SPA 81-A-025

Mr. Pammel moved to approve the Intent to Defer to May 13, 2003, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 22, 2003, (Tape 3), After Agenda Item:

Approval of April 15, 2003 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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~ ~ ~ April 22, 2003, (Tape 3), After Agenda Item:

Approval of Minutes for James L. Hickerson, VC 2002-PR-075  
For inclusion into the Return of Record

A discussion ensued between the Board and Susan Langdon, Chief, Special Permit and Variance Branch, regarding the typical deadlines for the filing of court cases and the possibility of the Board's legal representative requesting additional time from the Court to allow the Board more time to review Minutes to be included in the Return of Record.

Mr. Hart moved to defer the approval of the Minutes to April 29, 2003. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 22, 2003, continued from Page 417

As there was no other business to come before the Board, the meeting was adjourned at 12:02 p.m.

Minutes by: Alison Capo

Approved on: October 5, 2004

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

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 29, 2003. The following Board Members were present: Chairman John DiGiulian; Robert Kelley; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 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.

~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KHAN INTERNATIONAL, LLC., SP 2002-MV-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit building to remain 10.0 ft. from rear lot line. Located at 9308 Gunston Cove Rd. on approx. 34,578 sq. ft. of land zoned C-5. Mt. Vernon District. Tax Map 107-4 ((1)) 11A. (Admin moved from 11/12/02 per appl. Req) (Cont'd from 3/4/03) (Defer dec from 3/25/03)

Chairman DiGiulian noted that a deferral had been requested on SP 2002-MV-032.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the decisions on the proffer condition amendment and special exception amendment relating to this special permit were recently deferred by the Board of Supervisors and that the applicant was working on the case and might be amending or withdrawing the case. She suggested a deferral until May 27, 2003.

Mr. Hammack moved to defer SP 2002-MV-032 to May 27, 2003, as suggested by staff. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MARK AND ERIN SKOOTSKY, VC 2003-DR-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line. Located at 1806 Birch Rd. on approx. 11,599 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((11)) 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. Mark Rooney, the applicant's agent, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 5.5 feet from side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6.5 feet was requested.

Mr. Rooney presented the variance request as outlined in the statement of justification submitted with the application. He said the situation with this property was unique in that the applicant's father had a degenerative disease, which was going to require his use of a wheelchair and would cause difficulties with access to the dwelling on Birch Road. Mr. Rooney said the proposed addition would provide better access and safety for the family.

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

Mr. Pammel moved to deny VC 2003-DR-029 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK AND ERIN SKOOTSKY, VC 2003-DR-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line. Located at 1806 Birch Rd. on approx. 11,599 sq. ft.

~ ~ ~ April 29, 2003, MARK AND ERIN SKOOTSKY, VC 2003-DR-029, continued from Page 419

of land zoned R-3. Dranesville District. Tax Map 31-3 ((11)) 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 April 29, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants' justification did not contain a discussion on the criteria the Board of Zoning Appeals is required to find for granting a variance.
3. The lot is not unusual and is consistent with other lots in the neighborhood.
4. The depth of the addition is excessive.
5. The applicant has not met the prescribed standards for a variance under the provisions of the Zoning Ordinance.

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

~ ~ ~ April 29, 2003, MARK AND ERIN SKOOTSKY, VC 2003-DR-029, continued from Page 420

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 7, 2003.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MARK A. WOLVEN, VC 2003-MV-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line. Located at 7012 Colgate Dr. on approx. 7,260 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (14) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Wolven, 7012 Colgate Drive, Alexandria, Virginia, replied that it was.

Kristen Shields, Staff Coordinator, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 7.9 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 2.1 feet was requested.

Mr. Wolven presented the variance request as outlined in the statement of justification submitted with the application. He stated that he believed his project met the required standards for variance. He said the property was acquired in good faith and was characterized by exceptional narrowness so as to not allow the addition of a 12-foot wide garage attached to the north side of the house without violating the minimum side yard setbacks. Mr. Wolven stated that a 12-foot wide garage was the standard size for a single-car garage. He said the strict application of the Ordinance would produce hardship by not allowing him to construct a garage and storage space to increase the size and value of his residence. He stated that other properties in his area had erected permanent structures within the minimum setbacks. Mr. Wolven stated that the proposed addition would not have a detrimental effect on any adjacent properties and that it would enhance the fence line between the properties and increase privacy for the adjacent property to the north. He stated that granting the variance would not change the character of the zoning district. He said many other property owners in his residential community had increased the size of their residences with additions of living space and garages. Mr. Wolven stated that the BZA had heard and approved similar variances in the vicinity of his parcel. He stated that the proposed addition would be in harmony with the intended spirit of the Ordinance and was not contrary to public interest. He said he worked hard with his remodeler to make sure the addition and the garage would match the character of the existing residence and other neighboring residences. Mr. Wolven said the garage would be part of an ongoing remodeling using the same brand, style, and color siding with new Anderson windows. He stated that the remodeling would also include an entire roof replacement, and the garage would feature the same style roofing materials.

Mr. Hammack asked how far away the house on Lot 7 was located from the side lot line. Mr. Wolven replied that he would assume it was about the 10-foot setback or perhaps a little bit more.

Mr. Hammack noted that the length of the proposed garage was 33 feet rather than a typical 24-foot length. He asked if the applicant planned to put storage in the back of the garage. Mr. Wolven replied yes, that the houses in the neighborhood were small and that his was 53 years old with very little closet space and no storage space. He said he demolished an old dilapidated shed that was in approximately the area where he planned to build the addition.

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

Mr. Hart moved to approve VC 2003-MV-027 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

MARK A. WOLVEN, VC 2003-MV-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line. Located at 7012 Colgate Dr. on approx. 7,260 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (14) 8. 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 29, 2003; 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 showing compliance with the required standards for a variance.
3. The lot is fairly narrow.
4. The house is positioned in such a way that problems would result if a garage were put on either side of the house. The proposed 1-car garage will be on the side that is a little wider.
5. The required variance of 2.1 feet is relatively minimal and consistent with at least a couple of other variances in the neighborhood.
6. The depth of the garage may ordinarily be problematic, but based on the applicant's testimony about the need for storage, shifting the storage area to being more central may not be possible based on the configuration of the house.
7. The encroachment of 2.1 feet would not have a significant negative impact.
8. The house dates from 1950. The addition of a 1-car garage and some storage would be appropriate.

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

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

~ ~ ~ April 29, 2003, MARK A. WOLVEN, VC 2003-MV-027, continued from Page 422

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson of Alexandria Surveys International, LLC, dated January 13, 2003, 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 5-1. Mr. Hammack voted against the motion. 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 7, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        ESTATE OF COURTNEY O. BYRAM, VC 2003-MA-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.0 ft. from front lot line of a corner lot. Located at 3518 Maple Ct. on approx. 9,866 sq. ft. of land zoned R-3, HC and CRD. Mason District. Tax Map 61-2 ((17)) (F) 1. (Moved from 4/22/03 at appl's req.)

Mr. Hart disclosed that he was currently involved in two matters with attorneys from Lynne Strobel's firm; however, he stated that he did not believe his involvement in those matters would have an effect on his ability to participate in the case.

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, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of dwelling 12 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 18 feet was requested.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She said the subject property was currently vacant and the applicant proposed the construction of a brick and frame single-family home that would be compatible with the area. She presented preliminary architectural elevations to illustrate the proposed construction. Ms. Strobel said a number of circumstances created a unique condition that merited the granting of a variance, the property being an existing subdivided lot with physical characteristics of being long and narrow with two front yards, both requiring a 30-foot setback. She stated that under the constraints of a strict application of the Ordinance, the result would be a building footprint of only 8 feet wide, precluding reasonable development and producing undue hardship as

the applicant would be unable to construct a single-family detached home compatible with the area. She said the applicant had designed a residential footprint that satisfied the front yard requirement on Columbia Pike, a well-traveled roadway. Ms. Strobel said the variance was requested for the front yard adjacent to Maple Court, which she said had the appearance of a side yard given the layout in the area, and the applicant provided a 12-foot yard adjacent to Maple Court consistent with side yard requirements. She said the condition of having two front yards was not a general situation that was shared by other lots zoned to the R-3 District. She noted that the Comprehensive Plan did permit greater density in the area that could be achieved through townhouse development, but the applicant sought the approval of a variance because he believed single-family homes would be more in keeping with the character of the area. She stated that the applicant's proposal was a reasonable request in the context of existing physical conditions.

Mr. Pammel asked if the applicant owned Lot 2 also. Ms. Strobel replied affirmatively.

Mr. Pammel asked how many additional lots in Block F the applicant owned. Ms. Strobel replied that the applicant owned the lots that were on each side, that there were 4 lots on either side of Maple Court.

Mr. Hart asked if the applicant owned a total of 8 lots. Ms. Strobel replied affirmatively.

Mr. Hart noted that on the plat there was a proposed driveway and 22-foot ingress/egress easement on the left. He asked if that was to connect to the garages on the other houses. Ms. Strobel said yes, to avoid having direct driveway connections to Columbia Pike.

Mr. Hart asked if the other lots would have an easement over the subject lot to get to Maple Court. Ms. Strobel replied affirmatively.

Mr. Hart stated that he had been out to view the site and had difficulty determining the location of the lot line. He asked Ms. Strobel if she had any numbers for setbacks from Maple Court for any of the houses facing Maple Court. He said that it appeared to him that the houses were much farther back than 12 feet. Ms. Strobel said she did not have an exact dimension, but given the Zoning Ordinance requirement of R-3, potentially there would be a 30-foot setback. She added that those houses did not have the situation of two front yards as the subject property had.

Mr. Hart asked if it was correct that if a lot was platted in 1938, at that time there was not any setback requirement. Susan Langdon, Chief, Special Permit and Variance Branch, replied affirmatively.

Mr. Hart asked, given the proposed house footprint, where could a patio or deck be located. Ms. Strobel replied that the Zoning Ordinance allowed for certain encroachments into minimum yards with decks, and she did not think there could be anything other than what would be permitted by the Ordinance with regard to minimum yard requirements.

Mr. Hart stated that the footprint was 80 by 26. He said that if the one end was the front door and the other end was the garage, he was concerned that another variance would be requested for the side. He asked if the homes could have a ground-level patio but no deck or something like that. Ms. Langdon replied that it was possible there were some extensions allowed by right for decks depending on whether they were over or under 4 feet in height and depending on whether it was a side or rear yard. She said no extensions were allowed into a front yard and in no case could you be closer than 5 feet to a lot line.

Mr. Hart asked if the house could have a bay window or air-conditioner. Ms. Langdon replied that there were extensions for bay windows, but none shown on the plat.

Mr. Hart asked if there was a chimney. Ms. Strobel presented a building footprint.

Ms. Gibb asked Ms. Strobel if her client was the Estate of Courtney Byram. Ms. Strobel replied that there was a contract purchaser in the affidavit, which was Frank Gordon for GBI Corporation, on a revised affidavit dated February 26, 2003, which was submitted to the County Attorney's Office.

Mr. Hart and Chairman DiGiulian stated that they did not have copies of the revised affidavit.

Ms. Gibb disclosed that she had represented Embassy Development about a year and a half prior that had a



~ ~ ~ April 29, 2003, ESTATE OF COURTNEY O. BYRAM, VC 2003-MA-031, continued from Page 424

contract to a relationship with GBI, but she did not believe there was any reason she could not vote on the subject matter.

Chairman DiGiulian noted that the BZA was provided the revised affidavit from the file.

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

Ms. Gibb moved to approve VC 2003-MA-031 for the reasons stated in the Resolution.

Mr. Pammel indicated that he would not support the motion because he thought the hardship in this case could be overcome by combining commonly owned parcels to create the required dimensions for the side yard.

Mr. Hart stated that the lots appeared to be relating more to Columbia Pike than the neighborhood behind, and although it was unusual to have such a short setback in the front yard along Columbia Pike, with all of the lots being the same, it would be all right.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ESTATE OF COURTNEY O. BYRAM, VC 2003-MA-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.0 ft. from front lot line of a corner lot. Located at 3518 Maple Ct. on approx. 9,866 sq. ft. of land zoned R-3, HC and CRD. Mason District. Tax Map 61-2 ((17)) (F) 1. (Moved from 4/22/03 at appl's 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 April 29, 2003; and

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

1. The applicant is the owner of the land.
2. This is an older subdivision that has narrow lots.
3. If this were not a corner lot, the house, which has been designed for a very narrow lot, would comply with the Zoning Ordinance.
4. The applicant has made an effort to make a home that fits as well as it could on such a narrow lot.
5. The applicant has 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

~ ~ ~ April 29, 2003, ESTATE OF COURTNEY O. BYRAM, VC 2003-MA-031, continued from Page 425

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Ernest S. Holzworth, dated December 30, 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 5-1. Mr. Pammel voted against the motion. 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 7, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M. SEVEN CORNERS ANIMAL HOSPITAL, VC 2003-MA-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 3.5 ft. and 8.0 ft. from front lot line of a corner lot and parking less than 10.0 ft. from front lot line. Located at 6300 Arlington Blvd. on approx. 8,298 sq. ft. of land zoned C-8, HC, SC and CRD. Mason District. Tax Map 51-3 ((1)) 37.

Mr. Hart disclosed that he was currently involved in two matters with attorneys from Lynne Strobel's firm; however, he stated that he did not believe his involvement in those matters would have an affect on his ability to participate in the case.

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, the applicant's agent, replied that it was.

~ ~ ~ April 29, 2003, SEVEN CORNERS ANIMAL HOSPITAL, VC 2003-MA-030, continued from Page 426

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested the three following variances: Variance 1 was to permit the construction of a two-story addition to enclose existing dog runs and add office space to be located 3.5 feet from the front lot line of a corner lot. A minimum front yard of 40 feet is required; therefore, a variance of 36.5 feet was requested. Variance 2 was to permit the construction of an addition to enclose an existing stairway to be located 8.0 feet from front lot line of a corner lot. A minimum front yard of 40 feet is required; therefore, a variance of 32 feet was requested. Variance 3 was to permit parking to be located zero feet from front lot line. A minimum front yard of 10 feet is required; therefore, a variance of 10 feet was requested.

Ms. Strobel presented the variance requests as outlined in the statement of justification submitted with the application. She stated that the property was the subject of a variance approval in August of 1995. She said the applicant had experienced a number of problems in going through the minor site plan process, including issues regarding ADA and architectural compliance because the building was built in the '30s. Ms. Strobel stated that there were several additional time extensions granted by the BZA, and the minor site plan had been recommended for approval. She said that expired because the applicant's permit processor received some erroneous information about there not being a need to extend that site plan, so consequently the variance expired. She stated that the facts and circumstances were the same as were presented to the BZA previously and the applicant wished to construct the improvements and had reapplied. Ms. Strobel said the approvals on the property dated back to 1968 when the first special permit was approved for an animal hospital, with additional approvals being granted after that. She stated that the reason for requesting the variances at this time was because the applicant wanted to provide an addition that was going to create a more proficient operation within his facility by adding some office space and enclosing the dog runs, which would hopefully minimize some of the noise impact on adjacent owners. She said the current operation and capacity would not change. Ms. Strobel said the property was extraordinarily small and had been severely impacted by the construction of the interchange at Route 7 and dedications that were required for Route 50 and Old Wilson Boulevard. She introduced Dr. Rick Walsh and said both would be happy to answer any questions.

Mr. Hart stated that he was not on the BZA during the prior approval. He said he had gone out to the property and had trouble relating what was on the plat to some of what was on the ground, particularly the side where the additions would be close to Old Wilson Boulevard. He stated that he found it troubling that there were pedestrians coming from the Falls Church side up toward other things in Seven Corners with nowhere to walk. Mr. Hart asked if it was correct that there would be no sidewalk on the Old Wilson Boulevard side. Ms. Strobel answered no, if it was not shown on the plat, then it was not proposed.

Mr. Hart said if you were facing the building from Arlington Boulevard, to the left and behind the parking he saw an unscreened dumpster with boards and pallets piled up. He asked if the dumpster was going to stay the way he saw it and what was planned in that area. Dr. Walsh explained that the building sat in such a way that the front part, which faced the interchange, was a level above the back with a steep hill on the left side. He said the dumpster sat in that back corner in an area used for the dumpster and parking, and that was planned to continue.

Mr. Hart said it seemed like the dumpster was practically right on the street. He asked if that needed a variance or needed to be on the plat or screened in some way. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it did not show on the plat and that she would assume the dumpster was movable and usually anything that was movable did not require a variance.

Mr. Hart asked whether the gravel or mud area that did not have spaces delineated in the dumpster area was a parking area. Dr. Walsh replied that it was currently used for parking, that there was a shortage of parking in the area, and he briefly gave some history regarding the parking situation.

Mr. Hart asked if the parking area near the dumpster needed to be depicted on the plat or if it counted toward open area. Ms. Langdon replied that it was not shown on the plat as a parking area and that the required parking was met in the front of the building. She said she did not know the exact requirements, but she was sure there had to be an open area around a dumpster so that a trash truck could get in to pick it up. She stated that this was not a special permit application and was not looked at from that point and no site visit was done.

Mr. Hart stated that the accessory things seemed to be very close to the street, the existing building was

somewhat dilapidated, that the whole back side was unattractive, and that moving everything closer to the street would exacerbate the existing condition that included the parking and the dumpsters in front of it. He asked, since something was being requested regarding parking being 10 feet from the front lot line on the other side toward Route 50, was a variance needed for parking close to the street in the dumpster area. Ms. Langdon replied that if that was an area being used for parking and it was closer than 10 feet, it needed to be included as part of a variance. She suggested the applicant might address that issue and noted that the BZA could impose conditions for architectural review.

Mr. Hart asked if the dilapidated condition of the building was going to be fixed up. Ms. Strobel replied affirmatively and said that was what Dr. Walsh had been trying to achieve for a number of years in trying to get his minor site plan approved. She suggested Dr. Walsh could address the sum of money he had spent in an effort to get his plans approved to fix it up, but she said the goal of the entire variance was to provide improvements that would enhance the overall building.

Dr. Walsh explained that he had spent approximately \$20,000 over the past five years trying to get this accomplished, going back and forth with the County. He said, in terms of the back of the building, it had not been painted or upgraded because he had been told that if he started doing anything prior to getting the permit, he would not be able to get the permit. He stated that over the past few years, the roof had been replaced, the front and front entrance had been redone, fencing and landscaping had been put in the front, side windows had been painted and repainted, but he said he was restricted from repairing or painting in the back area because it was his understanding that could not be done while in the process of getting the building permit. Dr. Walsh said the construction in the back was going to go out and down, covering that area. He said the stairway was an outside entrance to the upstairs, which besides being a nuisance, was a danger in the wintertime. He stated that enclosing that would improve the building, the access to it and the look of it. Dr. Walsh said he would go over there and paint today, but the problem was that he needed the permit to do it right, and he had been going through the whole process for eight years.

Mr. Hart asked if there was a drawing that would show what the finished project would look like. Ms. Strobel said they did not have that. Dr. Walsh said they did not have it with them, but he explained it would be a rectangular footprint where the dog runs currently were located, that there would be no new footprint that was not already hardened. He said the existing footprint would not increase, that the only differences would be that the dog runs would have a roof over them and the second floor would be at the level of the first floor at the front, allowing the approximately 300 square feet of floor space.

Mr. Hart asked what it would be made of. Dr. Walsh replied that the existing building was concrete and stone and the exterior walls of the addition would be cinder block. He stated that he was not sure whether the plan included siding or not. He said complete plans that had been approved were at the County just before they expired.

Mr. Hart asked if there were going to be windows facing the street. Dr. Walsh said there would be, but he could not give a number. He explained where the exterior entrances would be located and how the windows would provide lighting for the animals.

Ms. Langdon said she had found in the Zoning Ordinance where it stated that solid waste and recycling storage containers could be located in any yard provided that a container located in a minimum front yard shall be located no closer than 15 feet to the front lot line and shall be screened.

Mr. Hart said he saw no screening, and he did not take measurements, but he thought it was closer than 15 feet.

Ms. Langdon said it was not shown on the plat, and the applicant could perhaps move it or provide screening. She said it may be something the BZA would want to address in the development conditions.

Chairman DiGiulian asked Ms. Strobel if she had any additional comments.

Ms. Strobel said she wanted to clarify that Old Wilson Boulevard was not a through street and was a paper street. Mr. Hart said there was an asphalt street the week prior to the hearing.

Ms. Strobel asked if it was used as a travel way. Mr. Hart said he drove his car that way.

~ ~ ~ April 29, 2003, SEVEN CORNERS ANIMAL HOSPITAL, VC 2003-MA-030, continued from Page 428

Dr. Walsh said that back in the '60s or early '70s, the first veterinarian that used the property took it upon himself to pave the hill. He said Wilson Boulevard over the years had crept towards his property by about 15 to 18 feet. He stated that the street was not actually owned by anyone and that VDOT did not claim it. Dr. Walsh said the street was actually not a street and was owned by himself and Koons and the other people that owned the lots along the way. Ms. Strobel said when they had begun the process, they had researched the street issue and found there was some question about whether it was a public street. Dr. Walsh stated that it was used primarily by the shopping center and his clients turning into the driveway.

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

Mr. Pammel asked, in regard to the right-of-way and whether it existed and who owned it, if it was ever vacated. Ms. Strobel said she did not think it was ever vacated, but she did not think it was maintained by the State.

Mr. Pammel stated that if it was not vacated, then it would still be owned as a public right-of-way. Ms. Strobel said she would have to do more research to give more definitive answers.

Mr. Kelley moved to approve VC 2003-MA-030 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SEVEN CORNERS ANIMAL HOSPITAL, VC 2003-MA-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 3.5 ft. and 8.0 ft. from front lot line of a corner lot and parking less than 10.0 ft. from front lot line. Located at 6300 Arlington Blvd. on approx. 8,298 sq. ft. of land zoned C-8, HC, SC and CRD. Mason District. Tax Map 51-3 ((1)) 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 April 29, 2003; and

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

1. The applicant is the owner of the land.
2. The application is a reaffirmation of a previously approved application that expired.
3. The site has a lot of problems. The applicant is doing his best to bring it up to standards.
4. Based on the Statement of Justification, the applicant's testimony and the testimony of the applicant's agent, the applicant has met the required standards.

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

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

~ ~ ~ April 29, 2003, SEVEN CORNERS ANIMAL HOSPITAL, VC 2003-MA-030, continued from Page 429

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 3.5 feet and 8.0 feet from the front lot lines of a corner lot and parking less than 10.0 feet from the front lot line of a corner lot, as shown on the plat prepared by Dewberry & Davis, dated April 20, 1995, revised through May 30, 1995, 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 5-0-1. Mr. Hart abstained from the vote. Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 7, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M. COLUMBIA PIKE, L.C., VC 2003-MA-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.0 ft. from front lot line of a corner lot. Located at 3517 Maple Ct. on approx. 9,803 sq. ft. of land zoned R-3, HC and CRD. Mason District. Tax Map 61-2 ((17)) (E) 8.

Mr. Hart disclosed that he was currently involved in two matters with attorneys from Lynne Strobel's firm; however, he stated that he did not believe his involvement in those matters would have an affect on his ability to participate in the case.

~ ~ ~ April 29, 2003, COLUMBIA PIKE, L.C., VC 2003-MA-032, continued from Page 430

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, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 12 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 18 feet was requested.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated there was some commonality in ownership and that everyone associated were the heirs of the original owners. She said the variance was being requested to permit construction of a single-family home. Ms. Strobel said the property was a corner lot that had two front yards, and if the Zoning Ordinance was strictly enforced, it would allow only a building of 8 feet in width.

Chairman DiGiulian called for speakers.

Peter Guadagno, 3513 Maple Court, came forward to speak. He stated he was not sure whether the 12-foot easement was applicable that was adjacent to his property. He said he was concerned that the driveway easement going across the rear of the subject property would be too close to his property. Ms. Strobel spoke briefly with Mr. Guadagno off the record using a map and explained the relationship between the two properties. Mr. Guadagno stated that Ms. Strobel had clarified the information he had been seeking.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2003-MA-032 for the reasons stated in the Resolution.

Mr. Pammel indicated that he would not support the motion because he thought the hardship in this case could be overcome by combining commonly owned parcels to create the required dimensions for the side yard.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COLUMBIA PIKE, L.C., VC 2003-MA-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.0 ft. from front lot line of a corner lot. Located at 3517 Maple Ct. on approx. 9,803 sq. ft. of land zoned R-3, HC and CRD. Mason District. Tax Map 61-2 ((17)) (E) 8. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 29, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required standards for variance applications.
3. The lot was subdivided in 1938 prior to the Ordinance.
4. The lot is very narrow.
5. The lot is impacted by double front yard requirements.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

~ ~ ~ April 29, 2003, COLUMBIA PIKE, L.C., VC 2003-MA-032, continued from Page 431

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Ernest S. Holzworth, dated December 30, 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 5-1. Mr. Pammel voted against the motion. 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 7, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      RAYMOND C. AND DAISY L. TAGGE, VC 2003-MV-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line. Located at 2123



~ ~ ~ April 29, 2003, RAYMOND C. AND DAISY L. TAGGE, VC 2003-MV-026, continued from Page 432

Rampart Dr. on approx. 11,658 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((20)) 50.

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

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a solarium addition 8.6 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 3.4 feet was requested.

Mr. Libcke presented the variance request as outlined in the statement of justification submitted with the application. He said the addition involved the enclosure of an existing stairwell to avoid branches and leaves falling into the stairwell, clogging the drain, and flooding the basement. He stated that the lot was irregularly shaped, and only the front corner of the enclosure would be too close to the property line.

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

Mr. Pammel moved to approve VC 2003-MV-026 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RAYMOND C. AND DAISY L. TAGGE, VC 2003-MV-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line. Located at 2123 Rampart Dr. on approx. 11,658 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((20)) 50. 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 29, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants demonstrated a peculiar hardship with reference to the property experiencing drainage and flooding problems created by the stairwell at the current location.
3. The shape of the lot is irregular.

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

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

~ ~ ~ April 29, 2003, RAYMOND C. AND DAISY L. TAGGE, VC 2003-MV-026, continued from Page 433

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson, dated 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. 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 absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 7, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD, SPA 81-A-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-025 previously approved for a church and nursery school to permit building additions, site modifications and increase in land area. Located at 9350 Braddock Rd. and 4925 & 5001 Olley La. on approx. 10.65 ac. of land zoned R-1. Braddock District. Tax Map 69-4 ((1)) 6, 7 and 8. (Moved from 4/15/03 at appl's req.)

Chairman DiGiulian noted that an intent to defer to May 13, 2003, at 9:00 a.m., had been previously approved by the BZA.

Mr. Hammack moved to defer SPA 81-A-025 to May 13, 2003, 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Mr. Ribble was absent from the meeting.

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~ ~ ~ April 29, 2003, (Tape 1), Scheduled case of:

9:30 A.M. DANIEL E. BELSOLE, A 2002-MA-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that an addition consisting of a garage and an accessory storage structure has been erected on the appellant's property in violation of the minimum setback requirements of the Zoning Ordinance. Located at 5106 Redwing Dr. on approx. 20,000 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((21)) 9. (admin moved from 3/18/03)

Maggie Stehman, Zoning Administration Division, made staff's presentation as contained in the staff report. She stated that this was an appeal of a Notice of Violation that the appellant constructed an accessory storage structure and garage in violation of the side yard requirements of the R-2 District. She said the additions that were the subject of the appeal were constructed over the last six months. Ms. Stehman said the appellant obtained a building permit for construction of a carport with the accompanying plat showing the location of the carport, and the carport was built. She said two weeks later, the appellant obtained a building permit for construction of an accessory storage structure, which indicated the structure would be 8.5 feet in height, located close to the side lot line. She stated that with a height of 8.5 feet, the location of the storage structure would not have been a problem; however, it was constructed with a height of approximately 12 feet, which was in excess of the maximum height allowable at that location. Ms. Stehman explained that the storage structure enclosed the carport, converting it to a garage; therefore, the carport no longer met the definition of a carport as set forth in the Zoning Ordinance, and a garage was not allowable within the side yard minimum requirement. She said the carport was not shown on the plat that was used when the applicant got the building permit for the storage structure. She stated that the building permit would likely have not been issued had the carport been shown correctly on the plat. Ms. Stehman said the options available to the appellant were either to remove the storage structure, thereby returning the garage to the carport status, or obtaining a special permit for an error in building location from the BZA.

Mr. Kelley said obtaining a special permit appeared to be the appropriate resolution and asked if the applicant had made any inquiries into applying for a special permit. Ms. Stehman replied that she had had a number of conversations with the appellant and they had met with Susan Langdon, Chief, Special Permit and Variance Branch, but the appellant chose to pursue the appeal process with the idea that perhaps he would seek a special permit if he did not prevail on the appeal.

Mr. Hart asked if, under the Zoning Ordinance, the height of an accessory structure would be measured on the outside to the midpoint of the roof. Ms. Stehman replied that for an accessory structure, it would be measured on the outside from the lowest to the highest point of the structure. She said if it was the principal dwelling, it would be measured to the midpoint of the roof.

Mr. Hart asked what the height of the subject structure was. Ms. Stehman replied that it was about 12 feet high.

Mr. Hart asked if there were fill on the inside, whether the finished floor on the inside would change the height of the structure. Ms. Stehman replied that in order to bring the structure into compliance, the 8.5 foot height would have to be on the exterior, and she said it would be difficult to reduce the height from the ground level utilizing fill.

Mr. Hart asked if there was something about how close an accessory storage structure could be to a carport that changed it from an accessory structure to an addition or how far away could it be. Ms. Stehman replied that there was not a set distance. She said for many years it had been interpreted in the Ordinance that a structure was attached if there were 3 feet separating the structures; however, she said that position was reconsidered and the opinion was currently, based on the provisions for accessory structures, that to be attached it had to actually be attached. She stated that the one inch separation on the subject property made it a detached structure.

Mr. Hart referenced a photograph and asked if the plywood or sheathing reflected in it was permitted on a carport. Ms. Stehman replied that it would not be permitted on the carport; however, it would be permitted on the shed.

Mr. Hart asked if assuming it was determined that the standards were met, all of the issues were fixable with a special permit application. Ms. Stehman answered affirmatively.

Mr. Hammack asked if the appellant filled in the storage structure and the garage floor up to a certain level, as was reflected in staff's report, would that attach the carport and shed to the structure if it was a continuous

floor and eliminate the 1-inch gap, and would that change staff's position. Ms. Stehman replied that as addressed in the provisions for accessory structures, connections were referred to as connections by a roof or a wall, not a floor, but she said that even if that did make it just one total addition, it would still be in violation of the side yard requirements and would still require a special permit.

Mr. Belsole stated that he had done the best he could, that before he started the project, he checked with a home inspector, Mr. Kapoor, and discussed the project with him thoroughly, got advice from him, and upon that advice, got the permit for the carport and constructed it. He said Mr. Kapoor came by and approved it. Mr. Belsole said he then got the permit for the shed and constructed it, after which Mr. Kapoor came by and approved it. Mr. Belsole said he spoke with his neighbor, Jack Uzubal, and discussed his building plans and that Mr. Uzubal told him that if he could get a permit, to go ahead and build it. Mr. Belsole said to make the structures more appealing to his neighbor, instead of pouring a cement slab and then building on it, he built the structures first and then was to do the cement work inside, but that it was being measured for height before the cement was poured.

Mr. Belsole said he disagreed with the staff report on some points. He said Ms. Stehman went to the property and measured from the peak to where the floor would be and the measurement was 10 feet, but in the report it said 12 feet. He stated that after he read the report, he contacted Ms. Stehman and discussed it with her. Mr. Belsole said the difference in the measurements would result in a difference in the percentage that the height varied, 17.65 percent rather than 50 percent. He stated that he had found other errors in the report regarding which side of the house the construction was on. He said he disagreed that the plat he took in for the storage structure did not show the carport. Mr. Belsole said the plat in the County's files had the carport on it, and even if he had carried in the wrong plat, Zoning was in error because they had the updated plat in the file and did not go back and pull it out.

Mr. Belsole said when he got the permit for the shed, he had asked where the height was measured and was told from the floor to the peak. He stated that the measurement from the floor to the peak was 10 feet because the carpenter had made a mistake. He said the staff report questioned whether it would be feasible to fill behind the shed and indicated he would need a grading plan to do so. Mr. Belsole said James Getts, Senior Engineering Inspector, Fairfax County Inspection Division, came out to the property and told him he could fill in with gravel and cement and that he did not need a grading plan. Mr. Belsole said he did not know what a homeowner was supposed to do, or who they could go to for proper advice or who they could believe.

Mr. Hammack asked Mr. Belsole if he had signed the building permit application for the shed. Mr. Belsole answered affirmatively.

Mr. Hammack stated that the building permit application showed 8.5 feet in height for the shed in two different places. He asked Mr. Belsole if he had filled it out saying the shed would be 8.5 feet in height. Mr. Belsole replied that the carpenter had made a mistake. Mr. Belsole said he was aware that the shed was supposed to be 8.5 feet from the floor up to the peak.

Mr. Hammack asked Mr. Belsole if he admitted that the shed was 10 feet in height. Mr. Belsole said he admitted that it was 10 feet, that the carpenter made a mistake. Mr. Belsole said he could not climb up to check the measurement as he was handicapped and the most he could be out of bed was two hours a day. He said he relied on the carpenter, who had left town and whose phone had been disconnected.

Mr. Hammack asked if the shed was two inches off the property line. Mr. Belsole answered affirmatively. He said he was told by the zoning office that it could be right on the property line, but to be on the safe side, he should keep it off two inches.

Mr. Hammack asked Ms. Stehman if that included any overhang or if that was to the wall. Ms. Stehman replied that it included the overhang.

Mr. Hart said he would try to answer Mr. Belsole's question regarding what a homeowner was supposed to do. He said if a carpenter made a mistake and built something that was 10 or 12 feet high when the permit was only for 8 feet, a special permit application for mistake in building location should be filed, and then a public hearing would be held and a decision made as to whether to grant it or not.

Mr. Hart asked if a survey was done by a surveyor or engineer before the wall was constructed. Mr. Belsole

~ ~ ~ April 29, 2003, DANIEL E. BELSOLE, A 2002-MA-046, continued from Page 436

said a survey was done when he bought the house in 1968, that the surveying pegs from that survey were used, and he did not have it resurveyed before building the shed. He said the homeowners on both sides of him accepted that as the property line. Mr. Hart said it appeared there were a lot of things going on in a tight area and typically it was better to have a line staked out to make sure construction was on the right side of the line.

A discussion ensued regarding the possibility of deferring the vote on the appeal to allow time for the appellant to apply for a special permit before enforcement would begin.

Chairman DiGiulian called for speakers.

Jack Uzubal, 5108 Redwing Drive, came forward to speak in opposition to the application. He said the structure had been partially constructed for six months, was shoddy with wood all over the place, and very unsightly. He indicated additional delays in the decision would be unacceptable. Mr. Uzubal said although he morally supported the appellant, he was forced legally to support the community and oppose the appeal. He stated that the shed should never have been built or approved. He said he was disappointed that the confusion had cost the appellant stress and money. Mr. Uzubal said he had offered to help tear it down. He said he believed it trespassed on his property by at least a foot. He stated that all the houses in the area were built on clay and gravel and drainage was very important. Mr. Uzubal said there was a 4-foot storm sewer at the back of the property. He said the driveway area was carefully graded to run the water back to the storm sewer, and putting a 4-foot obstruction of concrete or gravel on top would direct water onto his property and flood him out or increase the moisture content, leading to mold, mildew, and serious health problems. Mr. Uzubal said a wooden shed was a fire hazard which typically stored flammable items and should not be located right next to a house. He said for 35 years the unique character of the community in having 30 to 50 feet of open space between houses had not changed, and the approval of the appeal would establish a precedent. He stated that the appellant had built 82 feet of contiguous structures on a 100-foot lot that did not seem reasonable or in line with the community.

Mr. Pammel asked Mr. Uzubal if the appellant had obtained permission from him to grade on his property. Mr. Uzubal answered no. Mr. Uzubal said the appellant had told him he was going to build some stuff, and Mr. Uzubal told Mr. Belsole that he was in favor of the law and if what he was doing was legal, he was in favor of it, but then they found out it was not legal.

Mr. Pammel asked if there was fill on Mr. Uzubal's property. Mr. Uzubal replied that there was not yet, that it was still a dirt floor. He said the appellant was talking about doing that post-building.

A discussion ensued regarding the grading in the area of the property line, the drainage, and the pooling of storm water on Mr. Uzubal's property.

Harrison McCandlish, 5204 Redwing Drive, came forward to speak in opposition to the application. He said he had known the appellant since 1968 and that they were both original owners. He stated that he saw the appellant three to four times a week and that the appellant was ambulatory, drove a car, and that he had not seen the appellant in a wheelchair before. Mr. McCandlish said the appellant was determined to have a 2-car carport or shelter even though it required the construction of adjoining structures that spanned the entire width of the side yard and probably went over the side lot line. He said had the appellant submitted a building permit application showing what he actually constructed, it probably would not have been approved because it violated the Zoning Ordinance. He stated the height was clearly a violation and must be measured from the outside grade, not the inside. Mr. McCandlish stated that he thought this was not a matter of a carpenter's mistake, but rather an intent to build the structures as they existed. He said he thought the zoning inspector's second Notice of Violation was correct, that the structures did constitute an addition that must be offset 15 feet from the side lot line.

Charles Hill, 5200 Redwing Drive, came forward to speak in opposition to the application. He stated that when he saw the structure being constructed in late October, he could not believe how close it was to Mr. Uzubal's property. He said he went to the zoning office and spoke to them about the permit and was given a copy of the standard detached shed and was told that was what the appellant was authorized to build. Mr. Hill said he called back and was given measurements regarding the zoning requirements, and he said the next day he went to plan submission and told them he wanted to question his neighbor's shed. He stated that they pulled the permit which showed only the shed standing by itself with nothing in between. He said

~ ~ ~ April 29, 2003, DANIEL E. BELSOLE, A 2002-MA-046, continued from Page 437

he told them that there was a carport in between and was told that the carport was on the other side of the house. Mr. Hill said he advised that the carport they were referring to had been a finished room for several months and that there was another carport being built. He stated that he told them there were at least five permits posted at the site. He said they pulled another permit out showing the carport and the back deck, but no shed was indicated.

Ms. Stehman stated that there unfortunately were some errors made in the project, but that it did not change the facts, and she summarized the comments she had made earlier in her presentation. In regard to the staff report errors which Mr. Belsole referenced, Ms. Stehman said the directions might have been incorrect with regard to which side of the house the construction was on, but with regard to the structure height, Ms. Blevins, the inspector, and Ms. Stehman both measured the height as 12 feet. Ms. Stehman said she did take a measurement with a pole that was 10 feet, but it was measured going up from a line on the interior of the shed that indicated where the proposed floor would have been located.

Mr. Belsole stated that he disagreed with Mr. Uzubal regarding whether there would be water runoff from his property onto Mr. Uzubal's property. He said when his house was built in 1968 a swale was built between the properties to carry any water to the storm sewer. He stated that he had put a 4-inch PVC pipe from the downspouts that he intended to run to the storm sewer and that there should be no runoff from his property onto Mr. Uzubal's property. Mr. Belsole said Ms. Stehman came out to the property in February and that they both took measurements of 10 feet in height.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator regarding A 2002-MA-046. Mr. Pammel seconded the motion.

Mr. Hart said based on the information before the BZA and the appellant's admission, the structure was at least 10 feet in height and perhaps 12 feet on the exterior. He said the building permit called for a height of 8.5 feet; therefore, it required a special permit.

Mr. Hammack stated that the appellant had not given any good reasons to overturn the determination of the Zoning Administrator. He noted that according to the staff report, the appellant did not appeal the first Notice of Violation, and he asked if that was rescinded. Ms. Stehman replied that it was not rescinded. Mr. Hammack said the appellant may have waived his right to appeal in that regard. He stated that he was going to support the motion.

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

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~ ~ ~ April 29, 2003, (Tape 2), Scheduled case of:

9:30 A.M. PAUL HORMANN ET AL AND DUANE HORMANN ET AL, A 2003-HM-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a commercial use (automotive windshield replacement/repair business and mobile lock repair service) and are allowing a commercial vehicle to be parked on property located in the R-1 District in violation of Zoning Ordinance provisions. Located at 12345 Lawyers Rd. on approx. 2.03 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-4 ((1)) 26.

Chairman DiGiulian noted that A 2003-HM-010 had been moved to June 24, 2003, at 9:30 a.m., at the appellants' request.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Approval of BZA meeting dates  
For the last six months of 2003

Mr. Pammel moved to continue the item to May 6, 2003. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Ribble was absent from the meeting.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Consideration of Acceptance  
Application for Appeal  
West Lewinsville Heights Citizens Association and Stephen Sulzer

Regina Murray, Zoning Administration Division, presented staff's position as set forth in the memorandum from William E. Shoup, Deputy Zoning Administrator, dated March 24, 2003. She said there were two primary issues on appeal for the Board's consideration, whether the determination by the Director of the Department of Planning and Zoning that a 2232 Review is not required to allow Marymount University to use a field at Lewinsville Park and whether an oral determination by the Zoning Administrator that a special permit or special exception is not required may be appealed. She noted that the decision was deferred from April 8, 2003, to allow the appellant to submit a formal written request for determination by the Zoning Administrator. She reported that the written request was made on April 8, 2003, and that the Zoning Administrator responded with a written determination dated April 28, 2003.

Mr. Hart said he believed he had made a motion at the prior hearing to not accept the Consideration of Acceptance request because the appellants would be able to appeal the written determination. He noted that the written determination had just come out one day before the hearing and that the appellants would have 30 days to appeal the determination.

Bill Marr, the appellants' agent, said his recollection was that at the previous hearing on the matter Mr. Hart made an initial motion and another motion was made to continue the matter for the purposes of obtaining the written Zoning Administrator's determination and to give the BZA the opportunity to further review the matter. Mr. Marr stated that it was the intention of the appellants to appeal the written determination, and he said he would amend or supplement the original appeal.

A brief discussion ensued regarding whether a determination had been made that both the West Lewinsville Heights Citizens Association and Mr. Sulzer were aggrieved parties, and the BZA members indicated that no determination had been made regarding aggrieved party status.

Mr. Hammack stated that his recollection was that if the appellants appealed the written determination, the earlier appeal might be withdrawn. He noted that Mr. Marr said he intended to amend or supplement the original appeal.

Discussions ensued regarding how procedurally to go forward with the matter, during which Mr. Shoup clarified that a second appeal would need to be filed and that the April 28, 2003 written determination dealt with the original oral determination of the Zoning Administrator regarding the issue of whether or not special permit/special exception approval was required. He stated that staff's position was that the issues in the original appeal regarding the 2232 Review and the aggrieved party status were not properly before the BZA and would not be raised in the second appeal. It was determined that a second appeal would have to be filed, and if the two separate appeals were accepted, they could be consolidated and heard together.

Mr. Hart noted that Mr. Marr's letter and the response did not deal with whether a determination, written or oral, made that a 2232 Review was or was not required could be appealed to the BZA. He indicated his conclusion was that fell in a different section under the State Code and would not be heard by the BZA.

Ms. Murray clarified that the 2232 Review determination was made by the Director of the Department of Planning and Zoning and was a written determination via e-mail. She explained that staff's position was that particular determination was made in the administration of the Comprehensive Plan under Article 3 of the State Code and that appeals to the BZA are limited to determinations that are made in the administration and enforcement of the Zoning Ordinance under Article 7 of the State Code.

~ ~ ~ April 29, 2003, AFTER AGENDA ITEMS, continued from Page 439

Mr. Hart made the observation that the appellants had not referenced the 2232 Review issue in their recent written request, whether intentionally or unintentionally, and commented that the appellants might need to write an additional letter to address that and suggested that a package clearly stating what was being appealed be submitted within 30 days.

Mr. Marr stated that his group would make the determination with respect to the appeal within 30 days and would have a decision by the middle of the following week. He said he felt fairly certain that they would go forward, and they would work with staff if a question remained as to how to deal with the first issue on the initial appeal.

Mr. Hart asked if it would be problematic to defer the consideration of acceptance for two or three weeks. Mr. Shoup responded that if the second appeal were filed by the end of the following week and included the same appellants, staff would have the same issue on the aggrieved party status and it would have to be brought back to the BZA for acceptance, but it would be preferable to bring both questions of acceptance back to the BZA on the same date.

Mr. Hart asked if Mr. Sulzer could raise the issues regardless of whether it was Mr. Sulzer alone or he and the association. Mr. Shoup replied that staff would consider it to be acceptable if it was filed within the 30 days under Mr. Sulzer's name or some other neighbor joined in. Mr. Marr indicated it would be likely that additional neighbors would be joining in.

Mr. Pammel moved to defer decision on consideration of acceptance of West Lewinsville Heights Citizens Association and Stephen L. Sulzer to May 27, 2003. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
SP 99-B-054, B.W. Management

Mr. Kelley moved to approve 90 days of additional time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was May 30, 2003.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
SPA 78-P-192-2, Greenbriar Civic Association, Inc.  
Agape Christian Fellowship Church  
Pleasant Valley Preschool

Mr. Kelley moved to approve 12 months of additional time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was February 13, 2004.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
SP 2000-L-056, St. Mark's Episcopal Church

Mr. Kelley moved to approve 12 months of additional time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was June 20, 2004.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Approval of August 6, 2002 Minutes

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

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Request for Intent to Defer  
Trustees of Seoul Presbyterian Church, SPA 95-S-029

The application was currently scheduled for May 6, 2003. Mr. Pammel moved to approve the request for intent to defer to June 24, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Approval of Minutes for James L. Hickerson, VC 2002-PR-075  
For inclusion into the Return of Record. (deferred from 4-22-03)

Ms. Gibb moved to approve the minutes. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ April 29, 2003, (Tape 2), After Agenda Item:

Approval of April 22, 2003 Resolutions

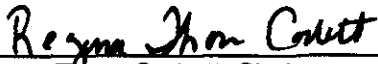
Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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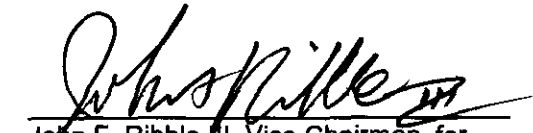
As there was no other business to come before the Board, the meeting was adjourned at 11:17 a.m.

Minutes by: Kathleen A. Knoth

Approved on: May 18, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 6, 2003. 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

~ ~ ~ May 6, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BRYAN D. AND SUSAN R. O'CONNOR, VC 2003-MV-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. and eave 6.9 ft. from side lot line and fences greater than 4.0 ft. in height in front yard and greater than 7.0 ft. in height in rear yard. Located at 1305 Lafayette Dr. on approx. 16,247 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 168 and 169.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bryan O'Connor, 1305 Lafayette Drive, Alexandria, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, located 7.9 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4.1 feet was requested. The applicant sought approval for an eave to be located 6.9 feet from the side lot line. A minimum side yard of 9.0 feet is required with a 3.0 foot extension into the side yard; therefore, a variance of 2.1 feet was requested.

The applicant also requested approval to permit a small section of decorative fencing of 6 feet in height to remain in the front yard. The Zoning Ordinance permits fences of up to 4 feet in height in front yards; therefore a variance of 2.0 feet was requested. The applicant requested approval to allow decorative fencing of 8.0 feet in height to remain in the rear yard. The Zoning Ordinance permits fences of up to seven feet in height in the rear yard; therefore, a variance of 1.0 foot was requested.

Mr. Hart asked Mr. Sherman where the fence was located on the property. Mr. Sherman indicated the location of the fences on the plat.

Mr. O'Connor presented the variance request as outlined in the statement of justification submitted with the application. He said the house was built in 1947 and had very small bedrooms, closets and bathrooms. Mr. O'Connor stated that the side and rear yards were very steep. He said the neighbors were at a significantly higher elevation than his property and privacy was an issue. Mr. O'Connor said they wanted to have an addition built to the house to allow for first floor increases in bedroom, bathroom, and closet space. He said the proposed location was the most feasible place for the location because if it was located in the rear yard it would cause drainage problems. Mr. O'Connor stated that the neighbors were in support of the application. He said he was not aware that the front fence was actually a fence. Mr. O'Connor said it was see-through lattice work that was part of the garden and it was used to grow ivy over the top of the corner of the yard. He said they would like a variance to keep the fences.

Chairman DiGiulian called for speakers

Susan O'Connor, applicant, came forward to speak in support of the application. She requested that the BZA approve the variance requests.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2003-MV-036 for the reasons noted in the Resolution.

Mr. Kelley noted that the property was beautifully landscaped.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

BRYAN D. AND SUSAN R. O'CONNOR, VC 2003-MV-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. and eave 6.9 ft. from side lot line and fences greater than 4.0 ft. in height in front yard and greater than 7.0 ft. in height in rear yard. Located at 1305 Lafayette Dr. on approx. 16,247 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 168 and 169. 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 6, 2003; 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 proposed addition meets the setback in the front corner.
4. There are converging lot lines towards the rear of the property, which requires a minimal variance to the rear.
5. The applicants testified that there are topographical conditions which preclude the addition from being constructed in another location on the property.
6. The variance will not change the character of the zoning district nor will it be detrimental to anyone in the neighborhood or 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:

~ ~ ~ May 6, 2003, BRYAN D. AND SUSAN R. O'CONNOR, VC 2003-MV-036, continued from Page 444

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

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

1. This variance is approved for the location of an addition and fences, as shown on the plat prepared by Bryant L. Robinson, dated January 9, 2003 and revised through February 24, 2003, 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 May 14, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 6, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAYENDER REDDY ANNAM, VC 2003-PR-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 1.8 ft. from side lot line. Located at 2115 Tysons Executive Ct. on approx. 6,434 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-2 ((48)) 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. Jayender Reddy Annam, 2115 Tysons Executive Court, Dunn Loring, Virginia, replied that it was.

William Sherman, 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 1.8 feet from the side lot line. In the PDH-3 District, minimum yards for deck additions are deemed to be one half of the distance of the yard that has been established by the location of the principal structure on the lot. The principal structure is located 13.9 feet from the side lot line; therefore, the minimum side yard is 6.9 feet and a variance of 5.1 feet was requested.

Mr. Annam presented the variance request as outlined in the statement of justification submitted with the application. He said the back yard was very steep and they could not do much in their rear yard. Mr. Annam said the request was consistent with other properties in the neighborhood because every home had a deck in the back.

Chairman DiGiulian called for speakers.

Soumy Kondapalli, applicant's wife, came forward to speak in support of the application. She requested that the BZA approve the variance.

Mr. Hart asked about the deck on the house next door. Mr. Sherman replied that the deck was by right

~ ~ ~ May 6, 2003, JAYENDER REDDY ANNAM, VC 2003-PR-033, continued from Page 445

because the house was set further from the lot line.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-PR-033 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAYENDER REDDY ANNAM, VC 2003-PR-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 1.8 ft. from side lot line. Located at 2115 Tysons Executive Ct. on approx. 6,434 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-2 ((48)) 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 May 6, 2003; 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 very small and adjoins community owned open space and causes no impact on an adjacent property.
4. The property is zoned PDH-3 and had the deck been shown on the dwelling at the time of approval of the zoning, it would have been permitted by right.

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

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

~ ~ ~ May 6, 2003, JAYENDER REDDY ANNAM, VC 2003-PR-033, continued from Page 446

not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 L. Carl Gardner, Jr., dated August 26, 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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 14, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 6, 2003, (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, increase in seats, building additions and site modifications. Located at 6426 Ox Rd. and 6401 Wolf Run Shoals Rd. on approx. 21.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((1)) 35, 36 and 36B. (Admin Moved from 12/17/02 1/28/03, 2/18/03 and 3/11/03 per appl.Req.)

Chairman DiGiulian noted that an Intent to Defer had been approved on April 29, 2003. Mr. Ribble moved to defer SPA 95-S-029 to June 24, 2003. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ May 6, 2003, (Tape 1), After Agenda Item:

Request for Additional Time  
VC 99-D-059, Barbara Farishian

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 January 21, 2004.

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~ ~ ~ May 6, 2003, (Tape 1), After Agenda Item:

Request for Additional Time for  
VC 00-D-112, Carolyn Jolly.

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 November 8, 2005.

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~ ~ ~ May 6, 2003, (Tape 1), After Agenda Item:

Request for Intent to Defer for  
Ronald & Leta DeAngelis, A 2003-SP-002  
Robert DeAngelis, A 2003-SP-003  
George Hinnant A 2003-SP-004

William Shoup, Deputy Zoning Administrator, stated that the subject appeal application were the Burke Nursery at 9401 Burke Road. He said the appeal was of a December 13, 2002, Notice of Violation for substantial violations involving the expansion of the nursery. Mr. Shoup said the appellants requested a deferral to December 2003, to allow time to complete a special exception process. He said they indicated an intent to obtain special exception approval to authorize the expanded activities. Mr. Shoup said staff believed that the appellants had initiated work to file for a special exception but the work had gone very slowly. He said a special exception had not yet been filed and for that reason staff did not support the deferral request.

William Thomas, Agent, said the plat of the survey information was received a week prior. He said the nursery had been there for over 25 years and during that time some of the structures had expanded. Mr. Thomas said that had met with staff to try to find the best approach to resolve the issues. He said now that they have the survey they hope to have the special exception application filed within a month. Mr. Thomas said the special exception process takes approximately six months.

Mr. Shoup said staff would like to see a diligent pursuit of the special exception application and would like to have a shorter deferral than six months.

Mr. Hammack moved to approve the Intent to Defer to defer the appeals to July 15, 2003.

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

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~ ~ ~ May 6, 2003, (Tape 1), After Agenda Item:

Approval of April 29, 2003 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ May 6, 2003, (Tape 1), After Agenda Item:

Approval of BZA meeting dates for the last six months of 2003

Mr. Pammel moved to approve the meeting dates. Mr. Hammack seconded the motion for purposes of discussion. Mr. Hammack noted that there would be only one meeting date in August, and he asked what the projected schedule was for August. Susan Langdon, Chief, Special Permit and Variance Branch, indicated that staff was not scheduling into August yet, but the caseload had been up and down, which is why August 12, 2003, was added as an "if needed" date. Ms. Langdon noted that there were five public hearing dates in July and four in September.

The motion carried by a vote of 7-0.

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~ ~ ~ May 6, 2003, (Tape 1), Scheduled case of:

9:30 A.M. ANH AND MINH Y. NGUYEN, A 2003-HM-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have paved a portion of the front yard on property located in the R-2 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 2643 Conquest Pl. on approx. 23,691 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 25-2 ((6)) 722.

Dolores Kinney, Zoning Administration Division, stated that the appeal was of a Notice of Violation that the appellant had paved more than 25% of the their front yard in violation of Paragraph 8 of Sect 11-102 of the Zoning Ordinance. She said the front yard of the property was approximately 7,232 square feet in area with a total driveway pavement of 2,245 square feet which equated to approximately 31% of paved area in the front yard. On May 26, 2002, the appellant entered into a contract with a paving company to expand an existing driveway on the front yard of the property. Ms. Kinney said the paving company could not begin the work at that time, but instead the appellants had to clear the property of a brick walkway, some shrubbery and plantings. She said in the meantime, on June 4, 2002, the Board of Supervisors adopted a Zoning Ordinance Amendment which required that no more that 25% of the front yard should be paved for parking or driveway purposes in the R-1, R-2 and R-3 Districts. On June 5, 2002, the paving company returned to the property to expand the existing driveway which resulted in it exceeding the limitations of the provisions of the Zoning Ordinance. Ms. Kinney stated that the appellants did not dispute that the driveway exceeded the Zoning Ordinance limitations but contended that the driveway should be grandfathered because the contract for the paving was executed prior to the effective date of the amendment. She said the appellants also indicated that the driveway expansion was due to safety reasons. Ms. Kinney said the appellant had a neck and back condition which was aggravated when she turned around to back out the driveway. She said by expanding the driveway, it would provide a turn around area for the cars so she could drive out forward. Ms. Kinney said the appellants stated that the expanded driveway area also provided a safe play area for their children. She said there were no grandfathered provisions with the amendment and the property was not nonconforming because the driveway did not exist prior to the effective date of the amendment. Ms. Kinney said staff reviewed the possibility that the expansion would be an accessibility improvement, but found that the amount of pavement exceeded that which would be necessary to accommodate an onsite turnaround for vehicles. She said it was determined that the pavement could not be deemed an accessibility improvement. Ms. Kinney said there were no Ordinance provisions to allow excess pavement to remain on the basis of having a play area for children.

Mr. Hart asked if "accessibility improvement" was defined in the Zoning Ordinance. William Shoup, Deputy Zoning Administrator, replied that there was a definition in the Zoning Ordinance. Mr. Shoup placed the definition page on the overhead projector. He said the definition explained what could be considered an accessibility improvement. Mr. Shoup said staff's conclusion was that the pavement on the property was far in excess of what was necessary to accommodate a turnaround movement on the property.

Mr. Hart said it was difficult for the BZA to evaluate the determination with no objective guidelines. He asked if a grading plan or a building plan was required to install the pavement. Ms. Kinney replied no.

Mr. Hart asked why staff indicated that it was the completion of the pavement that was the operative time. Ms. Kinney said staff based that response on the definition of nonconforming. She said if the expanded driveway area existed prior to the amendment, then it would be considered nonconforming, and in order to be considered existing, some portion of the driveway should have been laid. Ms. Kinney said none of it was actually laid before the effective date of the amendment.

Mr. Hart asked if there were any other examples of construction that did not require a permit or a grading plan, but there was an Ordinance change in between the start and the finish date and what was legal before they started became illegal before they finished. Ms. Kinney replied not to her knowledge.

Mr. Shoup said the wording in the front yard paving amendment was key. He said it talked about surfaced area and that was the issue. He said if there had been gravel sub-base then it would have been permitted, but there was nothing.

Mr. Hart asked if the appellants could apply for a variance. Mr. Shoup replied yes.

Anh Nguyen, the appellant, came forward, stating the driveway would still look large if they were to remove part of the driveway. He said he received approval from the homeowner's association. Mr. Nguyen said they completed an application to the homeowner's association with drawings which did not require approval

~ ~ ~ May 6, 2003, ANH AND MINH Y. NGUYEN, A 2003-HM-012, continued from Page 449

of the surrounding homeowners. He said everything was done according to plan. Mr. Nguyen presented photographs of other neighbors that had violated the homeowner's association's covenants.

Mr. Hart informed the appellant that the BZA did not have the authority to enforce homeowner association covenants.

Mr. Hart asked Mr. Nguyen if they had applied for a variance. Mr. Nguyen replied that a variance was expensive and he did not think he had done anything wrong.

Chairman DiGiulian called for speakers.

Twan Wong, 3771 Penderwood Drive, Gilma Hernandez, 2645 Conquest Place, Nathalie Weimerskirch, 11529 Links Drive, and Clement Oguns, 12713 Pinecrest Road, came forward to speak on behalf of the appellants. They stated that the extension of the driveway was not offensive or unsightly. The speakers also commented that the driveway was well kept and would not negatively impact property values in the neighborhood.

Jane Kay, 2647 Conquest Place and Jill Hart, 2653 Conquest Place, came forward to speak in support of the Zoning Administrator's determination. They requested that the driveway be reduced and conform to the neighborhood standards.

Ms. Kinney said the appeal was concerning the size of the driveway exceeding the 25% limitation in the front yard for pavement. She said there were no grandfathering provisions for the amendment. She said the pavement did not exist until after the amendment went into effect; and therefore, could not be considered a non-conforming use.

Ms. Nguyen gave a rebuttal to the speakers' comments indicating that some of the information presented was not accurate.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to overrule the determination of the Zoning Administrator. Mr. Pammel seconded the motion.

Mr. Hart said the case was unique and hoped it would not be susceptible to repetition. He said that the case boiled down to some relatively straightforward facts and one narrow but clear issue. Mr. Hart said he did not take lightly a motion to overrule the Zoning Administrator and he did not fault staff for their analysis and pursuit. He said the BZA were not addressing homeowner association rules or other issues but just zoning. Mr. Hart said in a situation where an activity or a project was a by-right use on a given date and no building permit or grading permit were needed and a homeowner signs a contract to spend \$5,000, commences the demolition of an existing brick sidewalk, commences the removal of the existing landscaping, commences the stakeout of the paved area, diligently pursues the completion of that work and the paving work is completed approximately 36 hours after the amendment took affect, the project had commenced before the Ordinance took affect and the pavement area was therefore, nonconforming on the facts presented, the owner would have some rights to complete that work even though they technically passed the deadline. He said to construe the facts otherwise would be incorrect. Mr. Hart said the second issue was whether this was an accessibility improvement or not. He said there was probably such a thing as accessibility improvement for a person under a disability to provide a route of access that might involve a front yard turn around and that probably was not necessarily constrained by the numbers in Paragraph B, but his motion was not based on that. Mr. Hart said he believed the Zoning Administrator was incorrect with their determination.

Mr. Kelley stated that he agreed with Mr. Hart about the commencement of construction time frame. He said the appellants made a good faith effort prior to the paving date to commence construction.

Mr. Hammack said he thought that staff was correct in their determination. He said he had sympathy for the appellants; however, the asphalt was laid after the effective date of the Ordinance. Mr. Hammack said he would not support the motion.

Chairman DiGiulian stated that he would support the motion.

~ ~ ~ May 6, 2003, ANH AND MINH Y. NGUYEN, A 2003-HM-012, continued from Page 449

The motion carried by a vote of 6-1. Mr. Hammack voted against the motion.

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As there was no other business to come before the Board, the meeting was adjourned at 10:56 a.m.

Minutes by: Regina Thorn Corbett

Approved on: September 14, 2004

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
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 13, 2003. 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

~ ~ ~ May 13, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN AND DENISE SPAULDING, VC 2003-BR-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.4 ft. from side lot line such that side yards total 15.2 ft. Located at 4203 Braeburn Dr. on approx. 12,718 sq. ft. of land 5/27 zoned R-2 (Cluster). Braddock District. Tax Map 58-4 ((27)) 163.

The applicant was not present at the time the case was called; therefore, the application was moved to the end of the agenda.

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~ ~ ~ May 13, 2003, (Tape 1), Scheduled case of:

9:00 A.M. FRANCIS J. HOPKE, TRUSTEE, VC 2003-LE-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.2 ft. from rear lot line. Located at 6252 Gentle La. on approx. 8,400 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4((36)) 99.

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 T. Clausen, Architect, 3525 Trinity Drive, Alexandria, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 16.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 8.8 feet was requested.

Mr. Clausen presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose a portion of an existing deck. Mr. Clausen said the addition would not extend any further into the yard than the deck. He stated that the neighbors were in support of the application. Mr. Clausen said the addition would be compatible with the existing dwelling.

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

Mr. Hammack moved to approve VC 2003-LE-038 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANCIS J. HOPKE, TRUSTEE, VC 2003-LE-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.2 ft. from rear lot line. Located at 6252 Gentle La. on approx. 8,400 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((36)) 99. 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 13, 2003; 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 house is positioned to the rear of the property causing a shallow rear yard.
4. The proposed screened porch would only take up a portion of the existing deck.
5. The addition will not encroach any further into the rear yard than the existing deck.
6. The photographs reflect that there would be no adverse impact on other 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 a screen enclosed porch, as shown on the plat prepared by Bryant L. Robinson, dated September 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

~ ~ ~ May 13, 2003, FRANCIS J. HOPKE, TRUSTEE, VC 2003-LE-038, continued from Page 454

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 May 21, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 13, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      STEPHEN A. BANNISTER, TRUSTEE, VC 2002-MA-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots and two outlots with proposed Lot 1 having a lot width of 9.16 ft., proposed Lots 2 and 3 having lot widths of 8.14 ft. Located at 4921 Sunset La. on approx. 3.02 of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 2. (moved from 11/5/02 12/10/02, 2/4/03 and 4/8/03 at appl. Req.)

Mr. Hart gave a disclosure but indicated it would not affect his ability to participate in the 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. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon, Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit subdivision of one lot into three lots and two outlots with proposed Lot 1 having a lot width of 9.16 feet and Lots 2 and 3 having lot widths of 8.14 feet where a minimum of 100 feet is required for the purpose of creating three single family detached residential building lots. Proposed Lot 1 would have an area of 19,000 square feet, proposed Lot 2 would have an area 15,000 square feet and proposed Lot 3 would have an area of 38,000 square feet. Proposed Parcel A would have an area of 20,500 and the second outlot would have an area of 34,000 square feet. The outlots were intended to provide Best Management Practices (BMP) and Stormwater Management credit (SWM) for the construction of the two additional dwellings. Variance Standard 4 requires that strict application of the Ordinance would produce undue hardship. Staff could not conclude that undue hardship would result from denying the variance as the subject property was developed with a single family dwelling that could be retained or replaced. Staff noted that subsequent to the publication of the staff report the applicant received a stormwater management waiver from DPWES which resolved the stormwater issue.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She said the applicant proposed the division of a single lot into 3 lots which necessitated approval of a variance. Ms. Strobel said the applicant was not seeking to maximize permitted density with the request. She said the property could be divided under the existing zoning to yield 4 or 5 lots. Ms. Strobel submitted a plan reflecting how the property could be divided under the existing zoning. She said it would require the extension of a public street and the applicant did not believe that such a division would be compatible with the area or would result in the best development of the property. Ms. Strobel said the property was encumbered by several unique features that warranted approval of the variance. She stated that the property was oddly shaped, long and narrow with limited frontage on a public street. Ms. Strobel said the property was also encumbered by exceptional topographical conditions characterized by steep slopes and a drainage swell which limited potential development. She said development at the existing zoning would require the construction of a public cul-de-sac at the terminus of Winter Lane or extension through the property. Ms. Strobel said the cul-de-sac would result in a large area of impervious surface and the grading required for construction would negatively impact existing vegetation and environmental features. She submitted photographs reflecting the vegetation currently on the property. Ms. Strobel stated that the applicant had met with residents in the area. She submitted revisions to Development Conditions 4 and 5.

Mr. Pammel asked about the proposed driveway across the right-of-way. Ms. Strobel stated that it would be required at the time of subdivision and the issue was addressed in the development conditions.

~ ~ ~ May 13, 2003, STEPHEN A. BANNISTER, TRUSTEE, VC 2002-MA-124, continued from Page 455

Mr. Hart asked whether the applicant would be building a driveway from the court to the property. Ms. Strobel replied yes.

Mr. Hart stated that Lots 4A and 4B were subjects of a variance and were subdivided and with the subject subdivision request it would leave Lot B in between. He asked if there was no interparcel access from Winter Lane, would Lot 3 then have to access from the left. Ms. Strobel replied that they had provided the ability for interparcel access.

Vice Chairman Ribble called for speakers.

Louis Kay, 4925 Sunset Lane; Steven Seekins, 4917 Sunset Lane; and Catherine Martin, 4915 Sunset Lane; came forward to speak in opposition of the application. They expressed concerns relating to the possible disturbance of a fish pond; sewer; maintenance of common areas; tree preservation; and, traffic increasing on Sunset Lane if access to Winter Lane was not provided.

Ms. Strobel stated in her rebuttal that there would be no additional traffic on Sunset Lane because only the current home would access that road. She said the variance would cause a better situation for the pond as opposed to by-right development.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 2002-MA-124 for the reasons noted in the Resolution.

Mr. Pammel said the proposal was thorough and in terms of environmental protection, the development was much more sensitive to the environment than if the property were developed by right.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN A. BANNISTER, TRUSTEE, VC 2002-MA-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots and two outlots with proposed Lot 1 having a lot width of 9.16 ft., proposed Lots 2 and 3 having lot widths of 8.14 ft. Located at 4921 Sunset La. on approx. 3.02 of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 2. (moved from 11/5/02 12/10/02, 2/4/03 and 4/8/03 at appl. Req.) 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 13, 2003; and

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

1. The applicant is the owner of the land.
2. The proposed development is more sensitive to the environment than if the property were permitted to develop by right.
3. The applicant has the right to put the utilities within the ingress/egress easement because they own the underlying property but the adjacent property has the right to access to the ingress/egress easement.
4. The applicant indicated that they would avoid disruption and inconvenience to the adjoining property owners.
5. A significant preservation of land was made through the two outlots that will be put within conservation easements.
6. The density on the site is just under 1 unit to the acre which is the base range as stated in the Comprehensive Plan.



~ ~ ~ May 13, 2003, STEPHEN A. BANNISTER, TRUSTEE, VC 2002-MA-124, continued from Page 456

7. The application is a superior approach to development of the site as opposed to a minimum of 4 units by right, which would cause far more disruption to the adjacent properties.
8. There will not be any additional impact on the adjoining parcel 3 and no impact on the pond because drainage would not flow in that direction.
9. The lot has an unusual configuration.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 minimum lot width of 9.16 for Lot 1 and a minimum lot width of 8.14 feet for Lot 2 and 3, as shown on the plat prepared by Paul R. Jeannin, Jr., dated June 3, 2002, as revised through April 25, 2003. 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 approval of an overlot grading plan for proposed Lot 2, the applicant shall, in consultation with the Urban Forestry Division of the Department of Public Works and Environmental Services (DPWES), prepare a landscaping plan to create a vegetated buffer along the southern lot line to provide screening between the dwelling on Lot 2 and Lot 3 to the south. The limits of clearing and grading may be reduced to provide the buffer and may be supplemented with additional vegetation, as deemed appropriate by the Urban Forestry division.
3. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements on proposed Lot 1 shall be submitted to the

Department of Public Works and Environmental Services (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. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forestry Division, a pre-construction conference shall be held on site between DPWES and representatives of the applicant to include the construction site superintendent responsible for 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. All 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. This condition shall also apply to proposed Lot 3 if the existing dwelling is moved or replaced. Notwithstanding that which is shown on the variance plat, the limits of clearing and grading shall be shifted westward by 10.0 feet between proposed Lots 1 and 2 and parcel B.

4. Parcels A and B shall be placed within a conservation easement and conveyed to a homeowners' association. The homeowners' association documents shall indicate that no trees shall be removed from Parcels A and B except for dead, dying or diseased trees. No structures shall be constructed on Parcels A and B.
5. This variance approval shall be null and void if the applicant is unable to obtain approval from VDOT to access the cul-de-sac at Winter Lane.
6. The applicant shall grant an ingress/egress easement for the benefit of proposed Lot 3 over the common driveway shown on the variance plat. Initial and all subsequent purchasers of proposed Lots 1, 2 and 3 shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

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

Mr. Hammack seconded the motion, which carried by a 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 May 21, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 13, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      ZIA HASSAN, VC 2003-SP-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots and an outlot with proposed Lot 2 having a lot width of 24.0 ft. Located at 13122 Moore Rd. on approx. 4.79 ac. of land zoned R-1 and WS. Springfield District. Tax Map 55-3 ((1)) 38.

Mr. Hart gave a disclosure but indicated it would not affect his ability to participate in the 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. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of one lot into three lots and an outlot with proposed Lot 2 having a lot width of 24 feet where a minimum of 150 feet was required for the purpose of create three single family detached residential building lots. Ms. Stanfield stated that staff could not conclude that

~ ~ ~ May 13, 2003, ZIA HASSAN, VC 2003-SP-028, continued from Page 458

Variance Standards 4 and 5 were met. She said a lot to the south shared the same hardship.

Mr. Hart asked if there was standard language for blasting issues. Ms. Stanfield stated that she was not aware of a standard condition addressing that issue but if the BZA desired to have a condition staff could add one.

Mr. Hart asked if Rock Pointe was a paper street. Ms. Stanfield replied yes.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She said the applicant originally submitted a rezoning request from the current R-1 designation to PDH-2. Ms. Strobel said the staff report recommended denial but the Springfield Land Use Committee favorably recommended the rezoning. She said the applicant decided that perhaps the features of the site made it more appropriate to seek a variance. Ms. Strobel stated that the development of the property was difficult and a variance seemed to be the most appropriate avenue. She said the staff report appeared to evaluate the proposal in the context of a rezoning. Ms. Strobel stated that many of issues identified such as design lighting and site amenities to reflect high quality design standards were not related to the approval standards for a variance. Ms. Strobel said the staff report acknowledged a number of existing physical features and encumbrances that supported approval of the variance. She said the property was long and narrow and should have been consolidated with one of the two PDH properties on either side when those properties were rezoned. Ms. Strobel said the existing surrounding development led the applicant to believe the property could be developed in a comparable fashion. She said the property was encumbered by existing utility easements which limited reasonable development. Ms. Strobel said the size, shape, and the existing conditions were all unique to the subject property. She said the proposed density was less than one unit per acre which was less than what was stated in the Comprehensive Plan. Ms. Strobel stated that the applicant's proposal was a relatively minor request in consideration of the physical constraints associated with the property. She proposed a change to Development Condition 4.

Vice Chairman Ribble asked when the property was purchased. Ms. Strobel replied approximately one year prior.

Ms. Gibb asked which way the house would face on the property. Ms. Strobel stated that had not been decided.

Ms. Gibb asked if Parcel 45 was owned by the Colonial Pipeline. Ms. Strobel answered affirmatively.

Mr. Hart asked if the Colonial Gas was in support of the application. Ms. Strobel stated that they had no objection to the application.

Mr. Hart asked if Colonial Gas had any setback requirements. Ms. Strobel replied that she was not sure but that issue would be addressed at the time of subdivision.

Mr. Hart asked if the applicant would be acceptable to a condition regarding blasting. Ms. Strobel replied yes.

Mr. Hart asked about landscaping. Ms. Strobel replied that the applicant had committed to a landscaping plan and tree save areas.

Vice Chairman Ribble called for speakers.

William Richards, 13111 Willow Edge Court; Judge Simmons, 5465 Rock Pointe Drive; and Claudia Scruggs, 5503 Willow Valley Road; came forward to speak in opposition of the application. They expressed concerns relating to tree cover; existing vegetation being destroyed; development of more than two houses being excessive; undue hardship was not met; cut through traffic; extension of Rock Point Drive; and, soil runoff.

Mr. Hart asked the speakers if they would prefer two homes developed by right rather than three houses with development conditions. The speakers agreed that they would prefer by-right development with two houses.

Ms. Strobel stated in her rebuttal that the existing zoning supported three houses because the density would be less than one dwelling unit per acre. She said through the application there was the ability to impose

development conditions that would result in measures that the community would be in favor of such as tree preservation, landscaping and blasting. Ms. Strobel said the property was under a severe hardship and it should have been consolidated with other properties when they were developed. She said the applicant's proposal was reasonable and would be a compatible development.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision for 30 days. He said he agreed that the property was unusual and was long and narrow and impacted by a utility easement. He said the BZA needed to be persuaded that the impacts would be mitigated through the development conditions. Mr. Hart stated that he was not sure he could support the three-lot scenario. He said there was little information regarding landscaping with no provision of supplemental vegetation. Mr. Hart said he would like to see a landscaping plan and a have a condition regarding blasting. He said the stormwater pond needed further clarifications and he was concerned about the proximity of the Columbia Gas easement.

Mr. Hammack seconded the motion. He said he would like to have information from Columbia Gas regarding blasting.

Mr. Pammel stated that he could not support the motion. He said he thought the minimum setback for blasting was 200 feet. Mr. Pammel said he was concerned about safety.

Mr. Kelley stated that he agreed with Mr. Pammel. He said the application had too many obstacles to overcome.

The motion to defer failed by a vote of 3-3. Vice Chairman Ribble, Mr. Kelley, and Mr. Pammel voted against the motion. Chairman DiGiulian was absent from the meeting.

Mr. Pammel moved to deny VC 2003-SP-028 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ZIA HASSAN, VC 2003-SP-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots and an outlot with proposed Lot 2 having a lot width of 24.0 ft. Located at 13122 Moore Rd. on approx. 4.79 ac. of land zoned R-1 and WS. Springfield District. Tax Map 55-3 ((1)) 38. 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 13, 2003; and

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

1. The applicant is the owner of the land.
2. There are safety issues with the proposed lots being less than 100 feet from the gas pipeline.
3. The BZA should not be considering subjecting another lot to a safety hazard.

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;

~ ~ ~ May 13, 2003, ZIA HASSAN, VC 2003-SP-028, continued from Page 460

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 failed by a vote of 3-3. Ms. Gibb, Mr. Hart, and Mr. Hammack voted against the motion. 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 May 21, 2003.

\*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.

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~ ~ ~ May 13, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD, SPA 81-A-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-025 previously approved for a church and nursery school to permit building additions, site modifications and increase in land area. Located at 9350 Braddock Rd. and 4925 & 5001 Olley La. on approx. 10.65 ac. of land zoned R-1. Braddock District. Tax Map 69-4 ((1)) 6, 7 and 8. (Moved from 4/15/03 at appl's req.) (def. from 4/29/03)

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

Mr. Hammack recused himself from the meeting because he was a member of the church.

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, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The

~ ~ ~ May 13, 2003, TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD, SPA 81-A-025, continued from Page 461

applicant requested a special permit to permit building additions, site modifications and an increase in land area. She said the proposal included an increase from 14,893 square feet of building area to 58,916 square feet to be constructed over three phases for a maximum FAR of 0.126. Phase 1 would add a 6,400 square foot fellowship building to the north side of the existing sanctuary and would also include a provision of a memorial garden on the south side of the building. Phase 1B would expand the fellowship hall an additional 9,000 square feet and would provide classroom space. The western end of the sanctuary would be expanded in Phase 1B. Phase 2 would provide a new sanctuary building that would seat 942 worshippers. An additional 147 parking spaces would be constructed to accommodate the new sanctuary. Staff recommended approval of the application subject to the proposed development conditions contained in the staff report. Ms. Stanfield stated that a new plat dated May 2, 2003, had been submitted which reflected the heights of the buildings.

Ms. Strobel presented the request as outlined in the statement of justification submitted with the application. She said the church had been on the property since 1968 and most of the buildings were from the 1960s. Ms. Strobel stated that the church had prepared a long term plan to allow for an increase in membership. She said the plan was sensitive to the community as the buildings were located far from the community. Ms. Strobel said the parking had also been reconfigured. She said the applicant had worked with the community and she asked the people present to stand to show their support for the application.

Vice Chairman Ribble called for speakers.

Ralph Marple, 5027 Henderson Drive, Robert Stein, 4325 Olley Lane; and Thomas Washburn, 5231 Lighthorn Road; came forward to speak in support of the application. They stated that all of the neighbors' concerns had been addressed and the community was in support of the application.

Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SPA 81-A-025 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 CHURCH OF THE GOOD SHEPHERD, SPA 81-A-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-025 previously approved for a church and nursery school to permit building additions, site modifications and increase in land area. Located at 9350 Braddock Rd. and 4925 & 5001 Olley La. on approx. 10.65 ac. of land zoned R-1. Braddock District. Tax Map 69-4 ((1)) 6, 7 and 8. (Moved from 4/15/03 at appl's req.) (def. from 4/29/03) 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 13, 2003; 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 application.
3. The applicant worked hard to make a good application and worked with the neighbors.

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

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

~ ~ ~ May 13, 2003, TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD, SPA 81-A-025, continued from Page 462

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, 9350 Braddock Road and 4925 and 5001 Olley Lane, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Adtek Engineers, Inc., dated November 22, 2002, as revised through May 2, 2003, 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. 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. Upon issuance of the Non-Residential Use Permit (Non-RUP) for Phase 2 of SPA 81-A-025, the maximum seating capacity for the Church shall be limited to a total of 942 seats.
6. The maximum total daily enrollment for the nursery school shall be limited to 100 children.
7. The number of employees for the nursery school on the property at any one time shall total twelve (12).
8. The maximum hours of operation for the nursery school shall be 9:00 a.m. to 12:00 noon, Monday, Tuesday, Thursday and Friday and 9:00 a.m. to 3:30 p.m. on Wednesdays.
9. Transitional screening shall be modified to allow the existing vegetation to be used to satisfy this requirement along the southern and western lot lines; however, supplemental vegetation shall be planted to provide understory and year-round buffering. The size, number and species of such plantings shall be determined in consultation with the Urban Forestry Division of DPWES, concurrent with the first Phase of development. Transitional Screening 1 shall be provided along the northern lot line during Phase 1 of the proposed development. Supplemental plantings shall be installed along the eastern lot line, in consultation with the Urban Forestry Division, DPWES, during Phase 1 with the exception of the additional plantings located adjacent to a proposed barrier (to soften the view of the barrier), that may be planted during Phase 2 of the proposed development.
10. The barrier requirement shall be waived along the northern, southern and western lot lines. The barrier requirement shall be modified to permit approximately 340 square feet of board-on-board fencing to be located along the eastern lot line, as depicted on the Special Permit plat. This barrier shall be constructed concurrent with Phase 2 of the proposed development, in consultation with the Urban Forestry Division of DPWES. The fence may meander to avoid trees or other vegetation.
11. Interior parking lot landscaping shall be provided in accordance with the provisions of Section 13-201 of the Zoning Ordinance.
12. Any proposed new lighting or replacements of existing lighting shall be provided in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall be low intensity design, full-cut-off fixtures, which focus the light directly onto the subject property. Shields shall be installed, if necessary.
  - 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(s).

- There shall be no uplighting of the existing or proposed buildings.
13. 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 the construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. Irrespective of the limits shown on the special permit plat, the extent of clearing and grading shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
  14. Stormwater management and Best Management Practices facilities shall be provided as depicted on the special permit 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 runoff and restore water quality. No additional vegetation shall be removed.  
  
Notwithstanding that which is shown on the special permit plat, Phase 1 Best Management Practices requirements may be partially satisfied by a conservation easement, to be placed over undisturbed open space, as determined necessary by DPWES.
  15. Use of the playfield, depicted in the northern portion of the site on the special permit plat, shall be limited to church members only and the field shall not be lighted.
  16. The existing two-story dwelling located on Lot 8 on the church property may only be used as a residence for the church pastor or church staff/caretaker and family, until such time as it is demolished to construct the proposed play field.
  17. The proposed structures shall consist of materials that are the same style, material and color as the existing structure. The proposed structures shall be similar in massing and scale to the existing structure. Photos and/or colored elevations that indicate the existing and proposed material, style, color and size shall be provided to DPWES at the time of building permit submission to demonstrate consistency.

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

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

Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Hammack recused himself from the meeting 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 May 21, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ May 13, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN AND DENISE SPAULDING, VC 2003-BR-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.4 ft. from side lot line such that side yards total 15.2 ft. Located at 4203 Braeburn Dr. on approx. 12,718 sq. ft. of land 5/27 zoned R-2 (Cluster). Braddock District. Tax Map 58-4 ((27)) 163.

The applicant was not present at the meeting. Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the applicant had been contacted and they were not aware they needed to appear at the public hearing.

Mr. Kelley moved to defer the application to May 27, 2003, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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~ ~ ~ May 13, 2003, (Tape 1), After Agenda Item:

Request for Additional Time for SP 00-S-045  
Jerusalem Korean Baptist Church

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was May 28, 2005.

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~ ~ ~ May 13, 2003, (Tape 1), After Agenda Item:

Approval of May 6, 2003, Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Kelley 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 10:50 a.m.

Minutes by: Regina Thorn Corbett

Approved on: September 14, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 20, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:10 a.m.

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

The meeting recessed at 9:12 a.m. and reconvened at 9:32 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. Pammel and Mr. Ribble 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.

Chairman DiGiulian called for the first scheduled case.

~ ~ ~ May 20, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        GEORGE AND ELIZABETH TOWNSEND, VC 2003-SU-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 8 in. from side lot line. Located at 12013 Hamden Ct. on approx. 20,058 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 18. (cont'd from 4/15/03)

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 and Elizabeth Townsend, 12013 Hamden Court, Oakton, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant originally requested a variance to permit the construction of a garage addition 8 inches from the side lot line, which was subsequently amended to 4.5 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 10.5 feet was requested. A revised plat was presented to the BZA.

Mr. Townsend stated that after the previous hearing, they had reconsidered their options for the placement of the garage, but that they still considered the proposed location on the side as the best option. He explained the revisions made to the plat which showed the side of the proposed garage being angled parallel to the side lot line 4.5 feet from the lot line. He stated that the front corner of the proposed garage remained 9.0 feet from the lot line. Mr. Townsend said locating the garage in the front yard was not a viable option because it would not aesthetically fit with the neighborhood as there were no other similarly located garages on any adjoining streets. Additionally, a dogwood tree would have to be removed, and their septic field was located in the front yard which could be impacted. He said they felt their request was reasonable and that 10 of their closest neighbors had signed a petition indicating their support.

Chairman DiGiulian called for speakers.

Anita Logosso, 12011 Hamden Court, Oakton, Virginia, came forward to speak in support of the application. She stated that she had been a real estate agent in the State of Virginia for 26 years and was the owner of the property adjacent to the proposed construction. She said she had no issue with the applicant's plans.

Helene Cassell, 12006 Hamden Court, Oakton, Virginia, came forward to speak in support of the application. She stated that she had obtained a variance herself to construct a two-car garage on her property which

~ ~ ~ May 20, 2003, GEORGE AND ELIZABETH TOWNSEND, VC 2003-SU-024, continued from Page 467

conformed to the neighborhood. She said there were new homes nearby that all had garages and that the proposed addition would help the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve-in-part VC 2003-SU-024 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE AND ELIZABETH TOWNSEND, VC 2003-SU-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 8 in. from side lot line. **(THE BZA APPROVED 4.5 FEET FROM SIDE LOT LINE.)** Located at 12013 Hamden Ct. on approx. 20,058 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 18. (cont'd from 4/15/03). 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 20, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants have satisfied the nine required standards for variance applications.
3. The subject lot is deep. The position where the proposed garage is located is centered on the lot, but due to converging lots lines towards the rear of the property, the side setback line is impacted to some extent.
4. The character of the neighborhood is that the garages are located adjacent to the residences and not located in front yards or some other location. Locating the garage in an alternate location may not be possible with the subject property because of the septic system in the front yard.
5. The applicants have made a case for granting the variance to be no closer than 4.5 feet from the side lot line as shown on the plat dated October 20, 2002, which accompanied the supplementary staff report dated May 12, 2003.
6. The residence on Lot 19 is approximately 28 feet away from the side lot line; therefore, that residence will not be impacted, and the owner of that property attended the hearing to support 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.

~ ~ ~ May 20, 2003, GEORGE AND ELIZABETH TOWNSEND, VC 2003-SU-024, continued from Page 468

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 garage addition, as shown on the plat prepared by Steven G. Robinson, dated October 20, 2002, date stamped May 8, 2003, 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 absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 28, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 20, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      HENRY HOROWITZ, VC 2003-MV-037 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 7519 Elba Rd. on approx. 15,300 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((13)) 1.

The applicant was not present at the time the case was called. Chairman DiGiulian moved the case to the end of the agenda.

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~ ~ ~ May 20, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH, A/K/A ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH OF ANTIOCH FOR THE EASTERN UNITED STATES, SPA 79-M-031-5 Appl. under Sect(s). 8-014 of the Zoning Ordinance to amend SP 79-M-031 previously approved for a church and related facilities to permit change in permittee. Located at 6200 Indian Run Pkwy. on approx. 5.0 ac. of land zoned R-4. Mason District. Tax Map 81-1 ((1)) 9B.

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, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit a change in permittee and no other changes; however, SPA 79-M-031-4 permitted the use of a trailer onsite for five years, which expired February 12, 2002. Mr. Sherman stated that proposed Development Condition 13 in the staff report required the trailer be removed prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the new permittee. He said staff did not support the applicant's position that the development condition be changed to require the applicant to remove the trailer within 90 days of the issuance. Staff recommended approval of the change in permittee subject to the proposed development conditions dated May 13, 2003.

Mr. McBride presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the applicant was attempting to purchase the old Columbia Baptist Church facility, that there would be no new construction involved, and the applicant wanted to occupy the facility as soon as possible so they could discontinue leasing another facility. Mr. McBride said the applicant would prefer to be allowed to immediately occupy the facility upon settlement and be allowed 90 days to remove the trailer. He said time would be needed to contract the removal of the trailer, which was a violation from the current owner of the property. Mr. McBride presented an alternative Development Condition 13 which would allow 90 days for the removal of the trailer. He said during the 90 days the applicant would hold services but would not occupy the trailer.

Ms. Gibb asked when the settlement would take place. Mr. McBride replied that settlement would take place in June.

Ms. Gibb asked if the applicant could contact someone to remove the trailer once the special permit was granted and prior to settlement. Mr. McBride replied that they could contact someone, but that they were not comfortable with removing it prior to the closing.

Ms. Gibb asked staff to clarify the basis for their recommendation not to endorse the requested development condition. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the condition required the removal almost a year prior and that staff believed the issue should be remedied before the issuance of a new Non-RUP, that it would not prevent the settlement, but would motivate the applicant to remove the trailer from the site. She stated that the trailer had been on the site for approximately 25 years, the special permit had been renewed several times, but that the current owner had not chosen to ask for renewal to keep the trailer.

Chairman DiGiulian called for speakers.

Ms. Gibb asked Mr. McBride if it was the applicant's contractual obligation to remove the trailer and if there was some reason why the seller could not remove it. Mr. McBride said it was not in the contract currently because the issue had just come up recently in the application. He said the property had been under contract for some time and the applicant was originally not aware that the permitted use of the trailer had lapsed and the trailer was still there. He stated that it would have to be negotiated with the seller. Mr. McBride said contractually he was unsure who actually would remove it, but regardless of whichever party did, their intent was to initiate that immediately. He said the applicant was attempting to guarantee its occupation and use for services of the property immediately upon settlement.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 79-M-031-5 for the reasons stated in the Resolution. Development Condition 11 proposed by the applicant and reflected in the resolution was substituted for Development Condition 13 in the staff report. Mr. Pammel explained that the basis for the substitution of the development

~ ~ ~ May 20, 2003, ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH, A/K/A ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH OF ANTIOCH FOR THE EASTERN UNITED STATES, SPA 79-M-031-5, continued from Page 470

condition was because negotiations would be required to determine who would remove the trailer.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH, A/K/A ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH OF ANTIOCH FOR THE EASTERN UNITED STATES, SPA 79-M-031-5 Appl. under Sect(s). 8-014 of the Zoning Ordinance to amend SP 79-M-031 previously approved for a church and related facilities to permit change in permittee. Located at 6200 Indian Run Pkwy. on approx. 5.0 ac. of land zoned R-4. Mason District. Tax Map 81-1 ((1)) 9B. 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 20, 2003; 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). 8-014 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, 6200 Indian Run Parkway (5.0 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis dated August 28, 1991, revised October 31, 1991, 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 sanctuary shall be one hundred (100).
6. Thirty (30) parking spaces shall be depicted as shown on the Special Permit Plat.

~ ~ ~ May 20, 2003, ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH, A/K/A ARCHDIOCESE OF THE SYRIAN ORTHODOX CHURCH OF ANTIOCH FOR THE EASTERN UNITED STATES, SPA 79-M-031-5, continued from Page 471

7. The existing vegetation shall remain undisturbed, except for the removal of dead or dying trees as approved by the Department of Public Works and Environmental Services/Urban Forester. The tree line shown on the Special Permit Plat dated August 28, 1991, updated October 31, 1991, shall be the limits of clearing in order to protect the floodplain and EQC within that area. There shall be no clearing and grading within this area. Proposed grading for this facility shall be the minimum amount required as approved by the Department of Planning and Zoning in coordination with the Public Works and Environmental Services. There shall be no clearing, grading or structure located within the EQC.
8. The property shall be made available for inspection by Fairfax County personnel during normal working hours.
9. The existing vegetation shall satisfy the Transitional Screening 1 Requirement. The six foot board fence shall be maintained in its current position, west of the play area and interior to the existing vegetation. The barrier requirement shall be waived along all other lot lines.
10. A 20 foot public access easement shall be provided, as determined by the Fairfax County Park Authority, along the west side of the property along Indian Run. The easement shall comply with the Fairfax County Parks Plan and shall be subject to the review and approval of the Fairfax County Attorney prior to issuance of a Non-Residential Use Permit.
11. Within 90 days of the issuance of a Non-Residential Use Permit that establishes this Special Permit Amendment, the trailer shall be removed. The trailer shall not be occupied prior to its removal.

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, six (6) months after the date of approval\* unless a new Non-Residential Use Permit has been obtained. The Board of Zoning Appeals may grant additional time to obtain a new Non-Residential Use Permit if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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 May 28, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ May 20, 2003, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT E. DONALDSON, VC 2003-DR-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.1 ft. from rear lot line and 12.4 ft. from side lot line such that side yards total 20.8 ft. Located at 2049 Hillside Dr. on approx. 12,769 sq. ft. of land zoned PDH-2. Dranesville District. Tax Map 40-1 ((33)) (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. Scott Donaldson, 2049 Hillside Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, consisting of a screened porch, 18.1



~ ~ ~ May 20, 2003, SCOTT E. DONALDSON, VC 2003-DR-058, continued from Page 472

feet from the rear lot line and total side yards of 20.8 ft. A minimum rear yard of 25 feet and minimum total side yards of 24 feet are required; therefore, variances of 6.9 feet and 3.2 feet were requested, respectively.

Mr. Donaldson presented the variance request as outlined in the statement of justification submitted with the application. He stated that in October of 2002, he had submitted an application to the County, which he said was approved. Subsequent to that, he said he was notified that a mistake had been made on the County's part, but by the time he had received the notification, construction had already begun.

Mr. Donaldson stated that there was a 20-yard deep common area at the back of his property for the seven houses on the street that added additional privacy, which could not be developed or used in any way. He said on the right-hand side of his property he had installed landscaping with tall trees and bushes for privacy, which his neighbors were delighted with.

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

Mr. Hart moved to approve VC 2003-DR-058 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT E. DONALDSON, VC 2003-DR-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.1 ft. from rear lot line and 12.4 ft. from side lot line such that side yards total 20.8 ft. Located at 2049 Hillside Dr. on approx. 12,769 sq. ft. of land zoned PDH-2. Dranesville District. Tax Map 40-1 ((33)) (2) 6. 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 20, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a variance.
3. The subject property consists of a quite large home on a fairly small P District lot.
4. The lot is not rectangular.
5. The property line on the right-hand side angles in toward the back so that the rear corner is somewhat closer to the side.
6. The placement of the home on the lot is toward the rear with a fairly shallow back yard.
7. The deck is not problematic.
8. The addition backing up to the common area does not cause any significant negative effect.
9. A building permit was originally issued in error, and construction was started, which aggravates in some respects the potential hardship to the owner.
10. With the development conditions and based on the existing conditions reflected in the photographs, there would be no significant impact on anyone.
11. The completion of the deck and porch in the proposed location would be a benefit to the property values 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, shown on the plat prepared by Tami A. Lenox, dated February 21, 2003, 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 absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 28, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 20, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL PEREL & JEANNE KADET, VC 2003-BR-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 4700 Declaration Ct. on approx. 12,344 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 252.

~ ~ ~ May 20, 2003, MICHAEL PEREL & JEANNE KADET, VC 2003-BR-034, continued from Page 474

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mike Perel and Jeanne Kadet, 4700 Declaration Court, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition to be located 15.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10 feet was requested.

Mr. Perel explained that the proposed addition would increase the size of the master bedroom and closet area and add a recreation room. He said the unusual shape of the lot did not permit the building of an addition to the rear without a variance. He stated that there were other houses in the development that had been able to build additions without variances because the lots were different sizes and shapes. Mr. Perel explained that they had considered building out to the right side of the house, but that was not a viable option because it would be too close to the neighbor and would require the removal of old growth trees and shrubs.

Mr. Perel stated that the proposed addition would not alter the appearance of the house from the front, so it would have no impact on the neighbors who viewed the house from that direction. He explained that the proposed addition would have a minimal impact on the neighbors to the rear because those houses were on much larger lots located far from the lot line with a buffer of tall trees between them and the subject property. Mr. Perel stated that the proposed addition would also have a minimal impact on the neighbors to the right side because they had a deck behind their carport and there was also a buffer of trees on that side so they would hardly be able to see the proposed addition.

Mr. Perel said the proposed addition would be similar in style to the existing house design and that the existing siding would be replaced during the construction of the addition. He confirmed that they had sent notices to ten adjacent or nearby property owners and had heard no complaints from them. He added that they had spoken to the immediate neighbors closest to the addition, who indicated they had no objection.

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

Mr. Ribble moved to approve VC 2003-BR-034 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL PEREL & JEANNE KADET, VC 2003-BR-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 4700 Declaration Ct. on approx. 12,344 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 252. 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 20, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants have met the nine standards required for a variance.
3. The applicant cited the shallowness of the rear yard, the shape of the lot, and the way the house is sited on the lot as the basis for 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 a two-story addition shown on the plat prepared by Peter R. Morgan, dated February 10, 1992, as revised through February 24, 2003, 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 May 28, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 20, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MELBOURNE H. BAILEY, VCA 00-V-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 26.7 ft. from front lot line and 6.0 ft. from rear lot line, deck 7.4 ft. from side lot line and 6.0 ft. high fence to remain in front yard. Located at 7833 Fordson Rd. on approx. 10,536 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((6)) 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. Melbourne Bailey, 7833 Fordson Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, 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 26.7 feet from a front lot line and 6.0 feet from the rear lot line, a deck 7.4 feet from a side lot line, and to permit a 6.0 foot high fence to remain in the front yard. A minimum front yard of 35 feet and a minimum rear yard of 15 feet are required; therefore, variances of 8.3 feet and 9.0 feet, respectively, were requested for the detached garage. A minimum side yard of 15 feet is required; therefore, a variance of 7.6 feet was requested for the deck. A fence with a maximum height of 4.0 feet is permitted in the front yard; therefore, a variance of 2.0 feet was requested.

Mr. Bailey presented the variance amendment request as outlined in the statement of justification submitted with the application. He said the purpose of the projects was to make living on the property safer and more comfortable. He explained that a variance was needed due to the size of the lot. Mr. Bailey noted that a variance had been approved for the placement of the dwelling. He explained that there was currently a door on the second level which could not be used and was boarded up, and the proposed deck would be positioned to allow use of that door. He said the fence in the front yard was being used in an effort to hide the accumulated items on the neighbor's property.

Mr. Ribble asked what was on the neighbor's property, whether anything was being done about it, and if the neighbor was supposed to clean it up. Mr. Bailey replied that it was just a lot of stuff. He said he had seen County representatives a number of times, but that he hadn't seen any resulting changes.

Mr. Ribble said if ever there were a junk yard, that was one. He and Ms. Gibb asked staff if they had any information about it. Ms. Stanfield replied that she had no information about the violation.

Ms. Gibb asked for clarification of where the house on Lot 3, the subject fence, the house on Lot 7, and the subject garage were all located and was advised of the locations and the fact that there currently was no house located on Lot 7.

Ms. Gibb asked the applicant if the existing driveway off Fordson Road would remain. Mr. Bailey replied that it would remain there but would not be used much.

Ms. Gibb asked the applicant if he had considered constructing the garage in a location attached to the house. Mr. Bailey replied that it was not possible to attach it because of the windows in the back and that it would be unsightly in the front.

Ms. Gibb asked the applicant if he had considered locating the garage closer to the house or if there were existing sewer lines or something preventing that location. Mr. Bailey replied that there was nothing to prevent it other than the fact that it would block the windows on the side of the house.

Mr. Hart asked what was supposed to happen with the door up in the air in the first variance approval. Mr. Bailey replied that it was not thought about then.

Mr. Hart commented to staff that it would be better to get rid of junkyards than approve fences all around them.

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

Ms. Gibb moved to approve VCA 00-V-057 for the reasons stated in the Resolution.

Mr. Hammack stated that he didn't have any problem with the variances in and of themselves, but he had

~ ~ ~ May 20, 2003, MELBOURNE H. BAILEY, VCA 00-V-057, continued from Page 477

concern that the existing driveway would remain and detract from the residential character of the neighborhood by having two entrances with two rather large driveways fronting on two different streets.

Mr. Hart asked staff to follow up on the accumulation of items on the adjacent property.

Mr. Ribble commented that he had viewed the adjacent property many times over the years and that the debris had previously extended over three lots, had been somewhat cleaned up, and currently appeared to be on only one lot.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MELBOURNE H. BAILEY, VCA 00-V-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 26.7 ft. from front lot line and 6.0 ft. from rear lot line, deck 7.4 ft. from side lot line and 6.0 ft. high fence to remain in front yard. Located at 7833 Fordson Rd. on approx. 10,536 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((6)) 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 May 20, 2003; and

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

1. The applicant is the owner of the land.
2. Based on the photographs presented and the history of the problems with the adjoining property, the applicant has made a case for the fence variance.
3. There were no objections voiced regarding the garage location, and it doesn't appear to have an impact on anyone.
4. The windows of the house prevent the garage from being attached to the building.
5. The deck located behind the fence doesn't have much of an impact, and the applicant made a case based on the photographs and the lay of the land 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.

~ ~ ~ May 20, 2003, MELBOURNE H. BAILEY, VCA 00-V-057, continued from Page 478

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

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

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

1. This variance is approved for the location of a detached garage, a deck and a fence shown on the plat prepared by Charles J. Huntley, dated September 23, 2002, as revised through February 12, 2003, 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 5-1. Mr. Hammack voted against the motion. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 28, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 20, 2003, (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 9/10/02 and 2/4/03) (admin moved from 5/6/03)

Delores Kinney, Zoning Administration Division, stated that the adjacent property owners of Lots 15, 15A, and 16 had acknowledged the responsibility of causing the subject violation and had entered into a consent decree with the County to remove the junk from the property and clear the area, but little had been done so far. She said he had been cited to be in contempt of court, and the hearing had been continued until August 1, 2003. Staff recommended deferral of the subject application to September 30, 2003, to allow time for the resolution of the court case.

~ ~ ~ May 20, 2003, T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023, continued from Page 479

H. Kendrick Sanders, the appellants' agent, stated that the only objection the appellants had to staff's recommendation was the date. He said one of the appellants, who was an attorney, had a four-day trial scheduled that would conflict with the September 30, 2003, date and requested the deferral of the subject appeal be either October 7 or 14, 2003.

Mr. Sanders stated that materials were being removed, a large amount of the scrap lumber had been removed, and slow progress was being made.

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

Mr. Ribble moved to defer decision on A 2001-LE-023 to October 7, 2003. Ms. Gibb seconded the motion, which carried by a vote of 5-0-1. Chairman DiGiulian abstained from the vote. Mr. Kelley was absent from the meeting.

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~ ~ ~ May 20, 2003, (Tape 1), Scheduled case of:

9:00 A.M. HENRY HOROWITZ, VC 2003-MV-037 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 7519 Elba Rd. on approx. 15,300 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((13)) 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. Mr. Henry Horowitz, 7519 Elba Road, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation 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 front yard. The fence height is 5.3 feet; therefore, a variance of 1.3 feet was requested.

Mr. Hart asked for clarification as to why an area to the left of the house on the drawing was not part of the application or not considered the front yard. Mr. Sherman replied that it was behind the front plane of the house.

Mr. Horowitz presented the variance request as outlined in the statement of justification submitted with the application. He said his property sloped up from the street at about 6% grade to about 3½ feet at the beginning of the fence, and the floor of the house was another 1 foot up, so it was 4½ feet up from the street. He stated that his house was 25 feet by 65 feet and was placed diagonally on the lot in such a way that the front of the house faced towards his southern neighbor, whose driveway was 5.0 feet from the property line, where there were usually a number of cars parked. Mr. Horowitz explained that his dining room and study were located at the front of his house and had large floor-to-ceiling-level windows and gable windows above that at all times provided a full view of the neighbor's driveway.

Mr. Horowitz said he attempted to screen the undesirable view in a way that would be pleasing to himself and the neighbors, so he used lattice set at right angles in 4-foot by 8-foot panels with posts, which resulted in a 5.3 foot fence height. He stated that the closest point of the fence was 38 feet from what he understood was the front yard, but he said the Zoning Department showed him the error that was made as a result of the misunderstanding of the definition of front yard. Mr. Horowitz said the screen was 16 feet in front of and parallel to the house and defined a semi-private, outdoor, landscaped courtyard sheltered from the adjacent driveway and Alba Road, which served as a connector route. He said the fence had the opportunity to have plantings hung on it and was made of cedar in a natural light tan color. He said he was planning to plant on the bank in front of the fence.

Chairman DiGiulian advised the applicant that the Board had received two letters in opposition from Mr. Fina and asked if the applicant had seen them. Mr. Horowitz replied that he had seen them the day prior to the hearing and asked if he should comment on them. Chairman DiGiulian replied affirmatively.

Mr. Horowitz stated that Mr. Fina was a building contractor who did a lot of work in Hollin Hills and lived on



~ ~ ~ May 20, 2003, HENRY HOROWITZ, VC 2003-MV-037, continued from Page 480

Elba Road. Mr. Horowitz said he bought a house two years prior to the hearing in Hollin Hills on Beachwood and had gotten a price from Mr. Fina of almost \$200,000 to do an addition on the house. He said that was more than he wanted to put into that house, so he sold the house and bought this one.

Mr. Pammel asked how long the applicant had lived in the subject house. Mr. Horowitz replied since February of 2002.

Mr. Hammack asked staff how the Notice of Violation came in. Mr. Sherman replied that it was a complaint to Zoning Enforcement but he could not reveal the source.

Mr. Hammack asked what the R-2 District front yard setback was. Mr. Sherman replied that it was 35 feet.

Mr. Hammack asked if the fence was 38 feet back. Mr. Sherman replied affirmatively.

Mr. Hammack asked if the applicant could by right build a garage, a deck or a patio in the subject area if it was attached to the house. Mr. Sherman answered that the front yard setback would be met, so yes, as long as it met the side yard setbacks as well.

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

Mr. Hammack moved to approve VC 2003-MV-037 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HENRY HOROWITZ, VC 2003-MV-037 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 7519 Elba Rd. on approx. 15,300 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((13)) 1. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 20, 2003; and

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

1. The applicant is the owner of the land.
2. A 4-foot fence which could be used by right would not serve the purpose the applicant wants it to serve, which is to give a privacy yard.
3. A deck, garage, or some other feature could be constructed in front of the house by right because it's beyond the minimum setback line, but because it's a fence, it's treated differently than part of the main structure of the house.
4. The applicant could accomplish his goals by planting shrubs that could grow 12 feet or more giving a natural barrier that would far exceed the 5.3 feet for which he is seeking approval.
5. The fence is 38 feet from the road at its closest point.
6. The fence provides some privacy for the applicant and shields the front of the house, which has a lot of glass and allows the dining room and kitchen to be visible from the street and neighboring yards.
7. The Design Review Committee of the Civic Association of Hollin Hills approved the privacy fence in a letter submitted for the Record.
8. The house is sited diagonally across the center of the property, which would have some effect on what the owners could do with the property.
9. The letter from the Civic Association of Hollin Hills' Design Review Committee settles the question in the applicant's favor of whether the fence would change the character of the neighborhood.

~ ~ ~ May 20, 2003, HENRY HOROWITZ, VC 2003-MV-037, continued from Page 481

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Larry N. Scartz, dated January 21, 2003, revised February 11, 2003, 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. 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 May 28, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 20, 2003, (Tape 1), After Agenda Item:

Consideration of Acceptance – Not Timely Filed  
Application for Appeal submitted by Frank A. Fishburne

Susan Epstein, Zoning Administration Division, stated that the appeal related to a March 13, 2003, Notice of Violation regarding 11123 Hill Street being used as a junk and storage yard in the C-8 and R-C Districts, which were not permitted uses.

Ms. Epstein said the appeal should have been filed within 30 days from the March 13, 2003, date of the decision, which resulted in a filing deadline date of April 14, 2003. She explained that the records indicated that the Notice of Violation was delivered via Sheriff's Letter on March 27, 2003; however, while conducting a site visit, Rebecca Goodyear, Senior Zoning Inspector, had given Mr. Fishburne a copy of the Notice on March 24, 2003, and advised him that he had 30 days from the date of the Notice to file an appeal, not 30 days from when the Notice was received.

Ms. Epstein stated that the appeal was filed on April 25, 2003, 13 days after the 30-day time limit; therefore, staff's judgment was that the appeal was not timely filed. Staff recommended that the Board of Zoning Appeals not accept the appeal for public hearing.

Chairman DiGiulian asked if staff had any understanding as to why Mr. Fishburne stated that he had not seen the Notice until March 25, 2003. Ms. Epstein replied that all she was aware of was that she had confirmed with Ms. Goodyear that the date she had hand-delivered the Notice to the property was March 24, 2003.

Mr. Hammack asked if March 24, 2003, was the first actual Notice Mr. Fishburne had received. Ms. Epstein replied that he had received a copy of the Notice on March 24, 2003.

Mr. Hammack asked when Mr. Fishburne filed his appeal. Ms. Epstein replied April 25, 2003.

Mr. Hammack asked if April 25, 2003, was the 30<sup>th</sup> day from March 24, 2003. Ms. Epstein replied that April 25, 2003, was 32 days from March 24, 2003.

Mr. Hammack noted that Mr. Fishburne's letter said March 25, 2003.

Chairman DiGiulian called the applicant to the podium to speak on the question of acceptance.

Frank Fishburne, 11123 Hill Street, Fairfax Station, Virginia, came forward and stated that he stood by his statement with the exception of the date listed as the purchase date. He said he purchased the property in 1971 instead of 1970.

Mr. Hart asked staff questions regarding the wording of "until the statement is given" in Virginia Code Section 15.2-2311. Ms. Epstein replied that staff considered the date the Notice was mailed on March 13, 2003, to be the date it was given.

A brief discussion ensued between Mr. Hart and Ms. Epstein regarding deadlines based hypothetically on other dates and business days versus non-business days.

Mr. Hart asked Mr. Fishburne if it was definitely March 25 and not March 24 when he received the Notice from Ms. Goodyear. Mr. Fishburne replied that the day he first viewed the Notice was the day Ms. Goodyear came to his property and he did not know if it was March 24<sup>th</sup> or March 25<sup>th</sup>, that he would have to look.

Mr. Hart asked Mr. Fishburne if he agreed that his appeal was filed on April 25, 2003, as stamped on his letter, which would be the 31<sup>st</sup> or 32<sup>nd</sup> day after the Notice was received, and not before that. Mr. Fishburne responded affirmatively.

Mr. Hart asked Mr. Fishburne if he had done something within the 30 days of receiving the Notice. Mr. Fishburne replied that he was not contending that he had filed on time.

The public hearing was closed.

~ ~ ~ May 20, 2003, AFTER AGENDA ITEMS, continued from Page 483

Mr. Hammack moved to deny the acceptance of the appeal because it was not timely filed. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Mr. Hammack, Mr. Hart, and Mr. Pammel discussed their beliefs regarding how Notices should be delivered, how the delivery should be documented, and when the 30-day period for filing an appeal should begin.

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~ ~ ~ May 20, 2003, (Tape 1), After Agenda Item:

Approval of February 19, 2002 Minutes

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

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~ ~ ~ May 20, 2003, (Tape 1), After Agenda Item:

Approval of May 13, 2003 Resolutions

Mr. Pammel moved to approve the Resolutions with Mr. Pammel's revisions. 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 10:59 a.m.

Minutes by: Kathleen A. Knoth

Approved on: September 14, 2004

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

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 27, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack. 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.

~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KHAN INTERNATIONAL, LLC., SP 2002-MV-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit building to remain 10.0 ft. from rear lot line. Located at 9308 Gunston Cove Rd. on approx. 34,578 sq. ft. of land zoned C-5. Mt. Vernon District. Tax Map 107-4 ((1)) 11A. (Admin moved from 11/12/02 per appl. Req) (Cont'd from 3/4/03) (Defer dec from 3/25/03 and 4/29/03)

Chairman DiGiulian noted that this special permit request had been withdrawn.

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~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE F. AND ANITA M. MAY, VC 2003-MA-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from rear lot line. Located at 7406 Chester Dr. on approx. 14,665 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((26)) 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. Anita May, 7406 Chester Drive, Annandale, Virginia, replied that it was.

Lindsey Shulenburg, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition 13.0 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 12.0 feet was required.

Ms. May presented the variance request as outlined in the statement of justification submitted with the application. She stated that the home was built in 1953. Ms. May explained that they needed more living space to accommodate a family of six. She said the exceptional shape and narrowness of the lot were the extraordinary conditions that limited expansion within current zoning setbacks. Ms. May stated that the property was triangular in shape and the home was located towards the rear of the lot. She said the Zoning Ordinance would produce undo hardship because of the current cost of buying another home. Ms. May said most homes in the neighborhood were on regularly shaped lots. She stated that without an addition the home was too small for her family. Ms. May explained that the proposed addition was in harmony with the surrounding properties. She said the design for the addition was created by an architect to ensure compatibility with the neighborhood. Ms. May noted that the character of the Zoning Ordinance would not be changed. She stated that Howard Wilson, who lived on the property behind the proposed addition, was not in agreement of the variance. She said he was concerned with the variance affecting the resale value of his home. Ms. May stated that she was willing to divide the cost of a fence that would give the adjoining neighbor privacy. She said the proposed addition was 3.0 feet lower than the existing house. Ms. May explained that Mr. Wilson's property contained a screened porch with a concrete foundation that brought his property 17.0 feet from the rear lot line. She stated that a variance was never granted for the screened porch. Ms. May said that Mr. Wilson's property had been used as a rental for approximately one third to one half of the time he had owned it. She said all surrounding neighbors were in support of the variance with the exception of Mr. Wilson. Ms. May stated that of the sixty six homes in Masonville Heights, thirty six had been improved with additions. She explained that they should have the same opportunity of improving their home.

Mr. Hart asked Ms. May if there would be two driveways for the home after completion of the addition. Ms. May stated that the existing driveway would be removed and a new driveway would be installed on the opposite side of the home.

~ ~ ~ May 27, 2003, LAWRENCE F. AND ANITA M. MAY, VC 2003-MA-040, continued from Page 485

Mr. Hart asked Ms. May if the addition consisted of a garage and additional living space. Ms. May stated that was correct.

Mr. Hart asked Ms. May if the addition could be turned ninety degrees. Ms. May explained that a variance would be needed for any addition that could be of use to her. She stated that she wanted to avoid the look of a long house.

Mr. Hart asked the applicant to show on the plat where the neighbor's home on Lot 35 was located.

Chairman DiGiulian called for speakers.

Howard Wilson, Lot 35, came forward to speak in opposition of the requested variance. He explained that there had been no exterior modifications to his house since it was purchased in 1982. Mr. Wilson stated that he was planning to sell the home in the near future. He noted that the May's variance request failed to meet Standards 2, 4, 6, and 7 of the Zoning Ordinance. Mr. Wilson clarified that the addition being requested was larger than the May's current house. He explained that there was ample room for an addition without the request of a variance. Mr. Wilson stated that the variance requested was a convenience and not a necessity. He said that the variance would be a detriment to his property.

Mr. Wilson stated that the screened porch on his property was there when the home was purchased in 1982.

Mr. Pammel noted that regardless of the time the porch was built, it was in violation of the Zoning Ordinance. He stated that Mr. Wilson would have to apply for a special permit.

Suzanne Wilson, Lot 35, came forward to speak in opposition of the requested variance. She explained that they had lived in their home all but five years since they had owned the property. Ms. Wilson stated that the size of the addition was out of character for Masonville Heights. She said the second floor of the addition would be two bedrooms and one bath. Ms. Wilson stated that the Mays could construct an addition without the need for a variance by altering the proposed addition. She said she contacted the realtor the Mays had used to question the possible decrease in neighbors property values. Ms. Wilson said the realtor could give only general statements without knowing the exact details of the addition.

Anita May stated in her rebuttal that all of the homes like hers in the neighborhood had been improved in some way. She said Mr. Wilson was absent regularly. Ms. May stated that they were planning on an aesthetically pleasing addition.

Lawrence May stated in rebuttal that, in his perspective, Mr. Wilson had the agenda to keep them from building anything.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-MA-040 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAWRENCE F. AND ANITA M. MAY, VC 2003-MA-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from rear lot line. Located at 7406 Chester Dr. on approx. 14,665 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((26)) 33. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 27, 2003;

~ ~ ~ May 27, 2003, LAWRENCE F. AND ANITA M. MAY, VC 2003-MA-040, continued from Page 486

and

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

1. The applicants are the owners of the land.
2. The lot has an unusual configuration.
3. There is a violation on the adjacent property which brings the adjacent property too close to the lot line.
4. The addition will be an attractive yet substantial addition to the house.
5. The addition will not create a negative impact on the value of the surrounding residences.
6. Based on the photographs and the evidence presented, the addition will be of better quality and more attractive than the neighbors' screened porch.
7. The applicant has presented reasonable justification for the variance request.
8. 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 the addition shown on the plat prepared by Dove and Associates dated September 2, 1987, as revised through February 5, 2003 by Philip L. Vander Myde, 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.

~ ~ ~ May 27, 2003, LAWRENCE F. AND ANITA M. MAY, VC 2003-MA-040, continued from Page 487

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 5-1. Mr. Hammack voted against the motion. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN AND DENISE SPAULDING, VC 2003-BR-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.4 ft. from side lot line such that side yards total 15.2 ft. Located at 4203 Braeburn Dr. on approx. 12,718 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 58-4 ((27)) 163. (Def. from 5/13/03)

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 Spaulding, 4203 Braeburn Drive, Fairfax, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 3.4 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet and combined side yards of 25.0 feet in the R-3 District under the cluster provisions; therefore, a variance of 4.6 feet was required for the minimum side lot line and a variance of 8.8 feet was required for the combined yards.

Ms. Spaulding presented the variance request as outlined in the statement of justification submitted with the application. She explained that the garage they planned to build was consistent with other garages in the neighborhood.

Mr. Pammel stated that he was concerned with the closeness of the garage to the property line. He asked the applicant if the size of the garage could be reduced by 2.0 feet. Ms. Spaulding stated that the garage would not be big enough for two cars.

Chairman DiGiulian asked the applicant if there were steps coming from the side of the house. Ms. Spaulding stated that there were steps to enter into the side door.

Ms. Spaulding explained that their house was small in size. She stated that they were looking to use part of the garage as storage space. She said the surrounding neighbors supported their request for a variance.

Mr. Hammack asked the applicant if the garage could be moved back to create a larger space between the two property lines. She stated that the structure could be moved back but would not be in harmony with the rest of the house.

Mr. Hammack noted that the garage was of minimum size. He stated that he would like to see the garage further from the lot line.

Ms. Spaulding stated that she would be willing to consider moving the garage back in order to obtain a variance.



~ ~ ~ May 27, 2003, JOHN AND DENISE SPAULDING, VC 2003-BR-039, continued from Page 488

Ms. Gibb asked the applicant if the pickup truck in the picture belonged to her. Ms. Spaulding stated that it did not.

Chairman DiGiulian stated that with the steps coming from the side of the house 22.0 feet would be a minimum for the garage.

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

Ms. Gibb moved to deny VC 2003-BR-039 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN AND DENISE SPAULDING, VC 2003-BR-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.4 ft. from side lot line such that side yards total 15.2 ft. Located at 4203 Braeburn Dr. on approx. 12,718 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 58-4 ((27)) 163. 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 27, 2003; and

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

1. The applicants are the owners of the land.
2. The lot is odd in shape.
3. There is a fence on the lot line.
4. The photographs reflect that there is a substantial distance between the subject property and the immediate neighboring property.
5. The far corner of the garage does not need a variance.
6. The applicant meets 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

~ ~ ~ May 27, 2003, JOHN AND DENISE SPAULDING, VC 2003-BR-039, continued from Page 489

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Folsom Rice, III, dated January 13, 2003, revised through February 25, 2003, 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 **FAILED** by a vote of 3-3. Mr. Hart, Mr. Pammel, and Mr. Hammack voted against the motion. Mr. Pammel moved to waive the 12-month waiting period for refiling an application. 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 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      MICHAEL A. BOOTH, VC 2003-LE-043 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 6430 Windham Ave. on approx. 1.01 ac. of land zoned R-1. Lee District. Tax Map 91-1((3)) 118

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 Booth, 6430 Windham Avenue, Alexandria, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested approval for a fence 7.2 feet in height to remain in the front yard. The Zoning Ordinance requires a maximum fence height of 4.0 feet in a front yard; therefore, a variance of 3.2 feet was requested.

Mr. Booth presented the variance request as outlined in the statement of justification submitted with the application. He explained that he considered the area where the fence was to be the side yard. Mr. Booth

~ ~ ~ May 27, 2003, MICHAEL A. BOOTH, VC 2003-LE-043, continued from Page 490

said that he received a Notice of Violation. He said his lot was pie shaped, and narrow in the front. Mr. Booth stated that he had five lots which backed to his yard. He said his neighbors had many items sitting along the fence which were an eyesore. Mr. Booth stated that he approached his neighbor in 2002 to replace his chain link fence. He said his neighbor disagreed so he moved 1.0 foot inside the property line and built a 7.0 foot fence.

Mr. Hammack noted that there was a letter in opposition to the fence sent by Mr. Grant. Mr. Hammack asked the applicant where Mr. Grant's house was located. Mr. Booth stated that Mr. Grant's house was to the rear of his property. He stated that Mr. Grant was the neighbor he approached about removing the chain link fence.

Mr. Hammack asked the applicant where the Bliss property was located. Mr. Booth said the Bliss property was located to the right of his lot.

Mr. Hart asked Mavis Stanfield, Senior Staff Coordinator, if the fence could be that high if it was built in a backyard. Ms. Stanfield stated that it could.

Mr. Hart asked the applicant if he built the fence himself. Mr. Booth stated that he had.

Mr. Hart noted that Mr. Grant's letter indicated there was an issue with the nails on the fence. Mr. Booth explained that he would remove the nails that were a problem.

Mr. Ribble asked staff how many dogs were allowed on Mr. Grant's property. Mr. Sherman stated that they were allowed to have four dogs.

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

Mr. Ribble moved to approve VC 2003-LE-043 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL A. BOOTH, VC 2003-LE-043 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 6430 Windham Ave. on approx. 1.01 ac. of land zoned R-1. Lee District. Tax Map 91-1 ((3)) 118. 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 27, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has an unusually shaped lot.
3. The neighbors all have backyards that abut the applicant's property.

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

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

~ ~ ~ May 27, 2003, MICHAEL A. BOOTH, VC 2003-LE-043, continued from Page 491

- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Larry N. Scartz, dated December 23, 2002, submitted with this application and is not transferable to other land.
2. Within thirty (30) days of the final date of approval of this Variance, the two sheds depicted on the variance plat shall be moved so as to comply with minimum yard requirements.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 5-1. Mr. Hammack voted against the motion. Mr. Kelley was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN & ANN MAHONEY, VC 2003-DR-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 2117 Reynolds St. on approx. 21,829 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((29)) 10.

~ ~ ~ May 27, 2003, KEVIN & ANN MAHONEY, VC 2003-DR-041, continued from Page 492

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ann Mahoney, 2117 Reynolds Street, Falls Church, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 10.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet in the R-2 Zoning District; therefore, a variance of 5.0 feet was requested.

Mr. Mahoney presented the variance request as outlined in the statement of justification submitted with the application. She explained that her first variance request in December of 2002 had been denied. Ms. Mahoney stated that the previous variance request was too close to the property line. She said her property was long and narrow. Ms. Mahoney explained that the structure was 26.0 feet wide because of a stair case that allowed access over the garage but the usable footage of the garage was 22.0 feet. She said they had a large sports utility vehicle and a smaller garage would not be useful. Ms. Mahoney stated that the garage had been moved 5.0 feet into the center of the yard. She said they had made the addition smaller than previously requested and moved it 5.0 feet away from the property line.

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

Ms. Gibb moved to approve VC 2003-DR-041 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN & ANN MAHONEY, VC 2003-DR-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 2117 Reynolds St. on approx. 21,829 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((29)) 10. 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 27, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants have worked hard to cause minimum impact on the neighboring properties.
3. The applicants are intruding as little as possible into the side set back.
4. Only the southeast corner of the garage is encroaching on the side lot line.
5. The lot is extremely narrow.
6. The applicant has 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

~ ~ ~ May 27, 2003, KEVIN & ANN MAHONEY, VC 2003-DR-041, continued from Page 493

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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, as shown on the plat prepared by Cynthia A. Berg, dated September 24, 1998 and updated through February 15, 2003, 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 absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:00 A.M. KAREN C. O'HERN, VC 2003-MV-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.0 ft., 8.6 ft. and eave 7.0 ft. from side lot line. Located at 1127 Priscilla La. on approx. 18,420 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((4)) (5) 519.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

~ ~ ~ May 27, 2003, KAREN C. O'HERN, VC 2003-MV-042, continued from Page 494

Appeals (BZA) was complete and accurate. Karen O'Hern, 1127 Priscilla Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of two additions, a screened porch to be located 8.6 feet from a side lot line, with an eave to be located 7.0 feet from a side lot line, and a 2-story addition attached to the dwelling to be located 8.0 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet in the R-3 Zoning District and an eave may extend 3.0 feet into the minimum yard. Variances of 3.4 feet and 2.0 feet were required for the screened porch and a variance of 4.0 feet was required for the 2-story addition.

Ms. O'Hern presented the variance request as outlined in the statement of justification submitted with the application. She stated that the rectangular shape of the lot left narrow side setbacks and the positioning of the in-ground pool did not allow expansion to the rear of the house. Ms. O'Hern said the variance would allow a garage to meet family needs and room for a home office for telecommuting. She said the addition was not out of character for the neighborhood. Ms. O'Hern stated that the neighbors were in support of the variance.

Mr. Hammack asked the applicant if the 2-story addition would enclose the existing carport and increase the height of the roof to the present roof line. Ms. O'Hern stated that it would.

Mr. Hammack asked Ms. O'Hern if the proposed addition would be closer to the lot line than the existing carport. Ms. O'Hern stated that it would be 4.0 feet closer to the lot line.

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

Mr. Hammack moved to approve VC 2003-MV-042 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KAREN C. O'HERN, VC 2003-MV-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.0 ft., 8.6 ft. and eave 7.0 ft. from side lot line. Located at 1127 Priscilla La. on approx. 18,420 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((4)) (5) 519. 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 27, 2003; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for a variance.
3. The applicant proposes to enlarge in a minimum manner and build where an existing carport has already existed.
4. The variance is minimal.
5. The height of the addition increases only slightly to match the height of the existing carport to the existing roof line.
6. The variance will not have detrimental impact on the adjoining properties or change the character of the zoning district.
7. The proposed location is the only place the addition could be built.
8. The width of the property is narrow.

~ ~ ~ May 27, 2003, KAREN C. O'HERN, VC 2003-MV-042, continued from Page 495

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Kenneth W. White, dated December 1, 1994, as revised by Rebecca L. G. Bostick, date stamped March 4, 2003, 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. 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 4, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ELVENA M. COFFEY, SP 2003-PR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain .5 ft. and 1.0 ft. and eave .2 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 9233 Okla Dr. on approx. 29,470 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elvena Coffey, 9233 Okla Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the special permit request 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 one shed to remain 0.5 feet from a side lot line and a second shed to remain 1.0 foot from a side lot line with an eave 0.2 feet from the lot line. The application also included a request to permit a 5.0 foot high fence surrounding a swimming pool to remain in a front yard. Accessory structures greater than 8.5 feet in height are required to meet the minimum side yard. The minimum required side yard in the R-1 Zoning District is 20.0 feet. Eaves are permitted to extend into the side yard 3.0 feet; therefore, modifications of 19.5 and 19.0 feet were requested for the two sheds. The eave would require a modification of 16.8 feet. Fences of 4.0 feet in height are permitted in front yards; therefore a modification of 1.0 foot was requested for the fence.

Ms. Coffey presented the variance request as outlined in the statement of justification submitted with the application. She stated that she had lived at her residence since 1962. Ms. Coffey said the area next to her property was ten acres of woodlands until the early 1980's. She stated that the swimming pool was installed in 1964. Ms. Coffey said at the time the pool was installed the County could not tell them what the proper height for the fence should be. She said when the shed was built, the County told them that they would not need a permit. Ms. Coffey stated that the height of the shed was greatly impacted by the topography of her lot. She stated that the sheds were never a problem with the former neighbors. Ms. Coffey had signatures from all of her neighbors in support of the sheds except one.

Ms. Gibb asked staff who the Zoning Violation was reported by. Ms. Coffey stated that her neighbor reported her.

Mr. Hammack asked Ms. Coffey if the neighbor that had filed the complaint was on the Briars of Westchester side of her property. Ms. Coffey stated that was her assumption.

Mr. Hammack asked the applicant if there was another place on the property that the sheds could be moved. Ms. Coffey stated that it would be a financial hardship to move the sheds. She also stated that because of the topography of her property there was no other place to move the sheds.

Mr. Hammack explained that he had a problem with leaving all three sheds on the property line. Ms. Coffey stated that she kept the sheds in good condition.

Mr. Hammack stated that Ms. Coffey had a large yard and there were other places on the property that would bring the sheds into compliance with the Zoning Ordinance.

Mr. Hammack asked Ms. Coffey why she needed three sheds on her property. The applicant stated that she did her own yard work and the sheds were used as storage for lawn mowers and various other gardening utensils. She explained that they were also used as storage for furniture.

Mr. Hammack noted that if the sheds were moved they could be screened by landscaping. Ms. Coffey stated that if the ground was level, the height of the shed would still be the same.

Chairman DiGiulian asked the applicant how long the sheds had been on her property. Ms. Coffey stated that one of the sheds had been on the property since approximately 1988. She said the other two sheds were constructed earlier.

Ms. Gibb asked staff if all three sheds were in violation. Mavis Stanfield explained that two of the sheds were in violation. She said the third shed met the height requirement.

~ ~ ~ May 27, 2003, ELVENA M. COFFEY, SP 2003-PR-006, continued from Page 497

Ms. Gibb asked staff if Zoning Enforcement had any input on the Zoning Violation. Paul McAdam, Zoning Enforcement Inspector, stated that the ground under shed C sloped, which made the shed eleven feet and three inches tall. Mr. McAdam stated that shed B was approximately 9½ feet in height.

Mr. Hart asked staff which shed was legal. Mr. McAdam stated that the smallest shed was the legal shed.

Mr. Hart asked Ms. Coffey which shed was built in 1988 and which shed was built in 1964. Ms. Coffey stated that shed C was built in 1988 and shed B was built in approximately 1986.

Mr. Hart asked the applicant if there had been any complaints of the sheds until now. Ms. Coffey stated that there had not.

Mr. Hart asked the applicant when the Briars of Westchester homes were constructed. Ms. Coffey said they were built in approximately 1982.

Mr. Hart asked the applicant if the sheds were constructed before or after the new development. Ms. Coffey stated that sheds B and C were built after the houses were built.

Chairman DiGiulian called for speakers.

Phil Medell, 9231 Okla Drive, came forward to speak in support of the special permit request. Mr. Medell stated that he had lived in his home for thirty years. He said that sheds A, B, and C were constructed before the new development. Mr. Medell said Ms. Coffey took exceptional care of her property. He explained that he felt the issue was not the sheds but was conflict between two neighbors. He stated that the neighbor who filed the complaint did not take care of his property.

Laslo Penteck, 9247 Okla Drive, came forward to speak in opposition of the special permit request. He said the changes in grade were not as severe as reported by Ms. Coffey. Mr. Penteck stated that he had been reported by neighbors regarding his bee keeping when, in fact, he was not in violation of the Zoning Ordinance. Mr. Penteck stated that sheds B and C were installed after 1980. He stated that his sunroom faced the sheds. Mr. Penteck said the sheds were placed where his and Ms. Coffey's properties abut. He stated that there had been complaints in the past pertaining to the sheds. Mr. Penteck stated that he had approached Ms. Coffey about moving the sheds and she then moved the sheds across his property line and against his fence. He said when he objected to the sheds being on his property line Ms. Coffey moved the sheds barely enough to be off of his property line. Mr. Penteck stated that the sheds were not permanent structures and were easily moveable. He stated that there was ample room on Ms. Coffey's property to move the sheds elsewhere. Mr. Penteck explained that he had no objection to Ms. Coffey's fence around the swimming pool.

Mr. Hart asked Mr. Penteck how long he had lived in the property next to the applicant's. Mr. Penteck stated that he purchased the home in 2000.

Mr. Hart asked staff if the complaint of the sheds followed the complaint of the bee keeping. Mr. McAdams stated that was correct.

Mr. Pammel asked Mr. Penteck if the stockade fence on the south property line was his fence or Ms. Coffey's. Mr. Penteck replied that it was his fence.

Mr. Hammack asked Mr. Penteck if he had obtained other complaints regarding the sheds under the Freedom of Information Act. Mr. Penteck explained that he received a response from the County stating that there had been previous complaints of the sheds.

Ms. Stanfield and Mr. McAdam stated that they were unable to find any prior complaints on the sheds.

Mr. Pammel asked Ms. Stanfield how tall was the fence surrounding the pool. Ms. Stanfield replied that the fence was 5.0 feet tall.

Ms. Coffey stated in her rebuttal that she had not had a confrontation with Mr. Penteck regarding the sheds.

~ ~ ~ May 27, 2003, ELVENA M. COFFEY, SP 2003-PR-006, continued from Page 498

Chairman DiGiulian closed the public hearing.

Mr. Hammack noted that there were two previous complaints regarding the sheds. He said one complaint was regarding the beauty shop and that Mr. McAdams found the beauty shop to be in compliance with the Zoning Ordinance. Mr. Hammack stated that the second complaint was regarding the sheds.

Mr. Pammel moved to approve in part SP 2003-PR-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

ELVENA M. COFFEY, SP 2003-PR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain .5 ft. and 1.0 ft. and eave .2 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. **(THE BZA DENIED SHEDS B AND C)** Located at 9233 Okla Dr. on approx. 29,470 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 28. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 27, 2003; 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

~ ~ ~ May 27, 2003, ELVENA M. COFFEY, SP 2003-PR-006, continued from Page 499

would cause unreasonable hardship upon the owner.

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

1. This Special Permit is approved for the location of the fence, as shown on the plat prepared by Bryant L. Robinson, dated December 18, 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 4-2. Mr. Hart and Mr. Ribble voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Hammack and Mr. Ribble seconded the motion, which carried by a vote of 5-1. Mr. Pammel voted against the motion. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 4, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ May 27, 2003, (Tape 1), Scheduled case of:

9:30 A.M. ROY E. MANUEL AND AN SE WOONG, A 2003-MV-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property was not legally subdivided and is, therefore, not a buildable lot under Zoning Ordinance provisions. Located at 6224 Quander Rd. on approx. 18,513 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((1)) 45.

Chairman DiGiulian noted that the Appeal had been withdrawn.

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~ ~ ~ May 27, 2003, (Tape 1), After Agenda Item:

Consideration of Acceptance  
West Lewinsville Heights Citizens Association

Regina Murray, Zoning Administration Division, reported that there were two appeals filed in this matter. She said the first one was filed on February 14, 2003. She presented the issues raised by the appellants in the first appeal and staff's concerns.

Ms. Murray said the first issue related to a determination made by Jim Zook, the Director of the Department of Planning and Zoning, pursuant to the administration of the Comprehensive Plan under Article 3 of the Virginia Code. She indicated that portion of the appeal was not filed with the proper body because the BZA's authority is specified in Article 7 of the Virginia Code and relates to decisions rendered during the administration and enforcement of the Zoning Ordinance.

Ms. Murray said the second issue raised in the appeal related to an oral determination of the Zoning Administrator regarding whether a special permit or special exception was needed. She explained that the determination was made orally in response to an oral request from the Park Authority in a private conversation and that staff determined that portion of the appeal was premature.

Ms. Murray said the third issue raised in the appeal asserted that the agreement signed by the Director of the Park Authority constituted a determination by the Zoning Administrator. She indicated that staff felt the agreement did not make any determinations regarding the administration of the Zoning Ordinance.

~ ~ ~ May 27, 2003, AFTER AGENDA ITEMS, continued from Page 500

Ms. Murray said the first appeal was presented to the BZA on April 8, 2003, at which time the BZA deferred decision to allow time for the appellants to request a written determination from the Zoning Administrator. She reported that the appellants filed a written request on April 8, 2003, and on April 28, 2004, the Zoning Administrator issued a written determination regarding the necessity of the special permit or special exception.

Ms. Murray said the first appeal came again before the BZA for decision only on April 29, 2003, and the BZA deferred decision to allow the appellants time to file an appeal regarding the April 28, 2003 written determination and to clarify which items the appellants wished to pursue. She said the second appeal was filed on May 20, 2003, which was limited to an appeal of the April 28, 2003 written determination of the Zoning Administrator. The second appeal, she said, listed not only West Lewinsville Height Citizens Association and Stephen Sulzer as appellants but also four other property owners, and she reiterated staff's position that the association had no direct interest and was not an aggrieved party.

Bill Marr, agent for the appellants, noted that there was a spelling error on the appeal regarding Robert Rosenbaum's name.

Mr. Marr stated that the BZA was considering acceptance of the first appeal of the Zoning Administrator and the appeal of Mr. Zook's determination as well as the second appeal regarding the Zoning Administrator's written determination.

Mr. Marr asserted that West Lewinsville Heights Citizens Association fits within the category of an aggrieved party based on the Virginia Beach Circuit Court case because a burden was imposed upon the association different from that suffered by the general public. He pointed out that the January 17, 2003 agreement between McLean Youth Soccer (MYS) and the County made specific reference to the association and required one member of the association serve on a formal working group led by the Park Authority to address concerns and remedies associated with the activities of MYS, which Mr. Marr suggested waived any restriction of West Lewinsville Citizens Association's standing.

Mr. Pammel asked if the MYS/County agreement was a requirement of the Zoning Ordinance or by any action of the Zoning Administrator. Mr. Marr responded that the agreement was done by the Park Authority, and he read from some minutes from the December 11, 2002 Park Authority Board meeting making reference to the terminology "public/private partnership." He pointed out that the Public/Private Education Facilities and Infrastructure Act of 2002 went into effect on July 1, 2002, and dealt with the approval of qualifying projects by the responsible public entity and required permits and approvals from local, state, or federal agencies. He said that it was an improper decision to attempt to go around that process and use a process through the Park Authority.

Mr. Hammack clarified that although the association was referred to in Paragraph 10 of the MYS/County agreement, the association was not a signatory, which Mr. Marr confirmed.

Mr. Hart moved to not accept Appeal Number 1, accept Appeal Number 2, and reserve the association's standing issue for determination at the hearing. He said that a 2232 Review does not fall within the Zoning Ordinance or within the scope of the BZA's authority under the Virginia Code. He mentioned that approach would be consistent with the procedure the BZA followed in the Davis Store case. He said there was no Virginia case law regarding the standing of an association that owned no property but was comprised of landowner members and that he thought the Virginia Beach case did not address the issues specifically. He concluded by saying that the BZA had no procedural guidance regarding the resolution of a challenge to standing and that he thought it more appropriate to preserve the issue for a later determination, let the record be developed, and make a ruling as to whether the evidence showed that someone was affected and maybe get case law from other jurisdictions.

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

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~ ~ ~ May 27, 2003, (Tape 1), After Agenda Item:

Request for Additional Time  
SPA 95-D-058, Our Small World, Inc.

Mr. Pammel moved to approve one year of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new expiration date was June 19, 2004.

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~ ~ ~ May 27, 2003, (Tape 1), After Agenda Item:

Request for Additional Time  
VC 00-B-107, Murray and Virginia Seltzer

Mr. Pammel moved to approve 12 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new expiration date was April 18, 2004.

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~ ~ ~ May 27, 2003, (Tape 1), After Agenda Item:

Approval of May 20, 2003 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 11:33 a.m.

Minutes by: Alison Capo

Approved on: May 18, 2004

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

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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, June 3, 2003. The following Board Members were present: Chairman John DiGiulian; Robert Kelley; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:01 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.

~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JERRY & LISA JAROSIK, VC 2003-HM-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line such that side yards total 14.0 ft. Located at 13334 Point Rider La. on approx. 11,512 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jerry Jarosik, 13334 Point Rider Lane, Oak Hill, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of an addition 4.0 feet from the side lot line such that side yards total 14.0 feet. The Zoning Ordinance requires a minimum rear yard of 8.0 feet with a total side yard of 20.0 feet; therefore, variances of 4.0 feet and 6.0 feet were requested.

Mr. Jarosik presented the variance request as outlined in the statement of justification submitted with the application. He stated that the additional space for a recreation room was because of growth in the family since they purchased the house 9 years prior. He stated that the addition would be in character with the community and requested the Board's approval of the addition.

Mr. Hammack stated that the requested 44 feet of house 4 feet from the property line concerned him and asked if the addition could be relocated to the rear of the house.

Mr. Jarosik stated that the east side of the addition would go to the rear yard and stated that alternate versions without the variance would only provide a two car garage and no recreation room and therefore only that portion of the proposal required the variance. He stated that they had received approval from the homeowners association as well. Mr. Jarosik discussed several different alternatives that he had looked at prior to the current proposal.

Chairman DiGiulian gave Mr. Jarosik a letter in opposition from his adjacent neighbor for his review and comment. Mr. Jarosik read the letter and responded to the Board, stating that any change to the property would create a visual change and that it was not their intent to cause negative impact to the community with the creation of the addition and again asked for the Board's approval.

Chairman DiGiulian called for speakers.

Robert Costa, 13337 Point Rider Lane, came forward to speak in support of the application. Mr. Costa stated that people had made decisions to stay and build out their houses rather than to move from the community, and he noted that the Jarosiks' request was compatible to other homes in the community. He stated that it was a fair solution to their family's growth for their home.

Tom Hasson, 13330 Point Rider Lane, adjacent homeowner, came forward to speak in opposition to the application. Mr. Hasson read a letter that he presented for the record to the Board noting his reasons for opposition of the addition.

Mr. Jarosik came to the podium to rebut the opposition stating that they had met with the neighbor in opposition to review the addition prior to making the variance request and noted that he was not opposed; however, he stated that he would be willing to work with his neighbor to ensure the best proposal. He noted that no other homes in the neighborhood had the same situation as they had with regard to the garage addition and asked for the Board's approval of his request.

Chairman DiGiulian closed the public hearing.

~ ~ ~ June 3, 2003, JERRY & LISA JAROSIK, VC 2003-HM-045, continued from Page 503

Mr. Hammack moved to deny VC 2003-HM-045 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JERRY & LISA JAROSIK, VC 2003-HM-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line such that side yards total 14.0 ft. Located at 13334 Point Rider La. on approx. 11,512 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 12. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 3, 2003; and

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

1. The applicants have not made a justification that they have satisfied the nine required standards for the granting of a variance.
2. Although a lot of thought and effort has been put into the proposed addition, the Board is not supposed to grant variances unless the hardship is met.
3. The property is larger than some of the other properties in the neighborhood and it doesn't seem to have characteristics that are different from many of the other properties.
4. It seems like part of the addition, perhaps part of the recreation room, could be built within the setback lines or in such a way that would require a minimal variance.
5. An addition can't be supported 4.0 feet from the side lot line that is 46 feet long because it impacts the adjacent property.
6. The roofline is increased by several feet and the bulk of the addition is directed on the adjacent property. In the R-3 Cluster Zoning, the lot is a little smaller than normal because of the cluster provisions of the Zoning Ordinance.
7. The applicant had said that they had explored other options, some of which were less expensive. It may be that one of those less expensive options would be better, but, another rule the Board is supposed to apply is that a variance is not granted based on the convenience of the parties.

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:



~ ~ ~ June 3, 2003, JERRY & LISA JAROSIK, VC 2003-HM-045, continued from Page 504

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 refilling. 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 11, 2003.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JERALD FRITZ, TRUSTEE, VC 2003-DR-049 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 10.0 ft. from side lot line and to allow patio to remain 3.5 ft. and dwelling 9.8 ft. from side lot line. Located at 1850 Massachusetts Ave. on approx. 10,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 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. Jerald Fritz, 1850 Massachusetts Avenue, McLean, Virginia, replied that it was.

Cathy Lewis, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested construction of an upper deck 10.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet; therefore, a variance of 5.0 feet was requested. She stated that the applicant also requested an existing slate patio to remain 3.5 feet from the side lot line and to allow the existing dwelling to remain 9.8 feet from the side lot line. Because the patio is permitted to extend 5.0 feet into the side yard; a variance of 6.5 feet was requested. She stated that on July 28, 1989, a variance was granted to allow construction of the dwelling 10.0 feet from each side lot line; however, when the dwelling was constructed in 1991, one portion of the house was actually located 9.8 feet from the side lot line; therefore, a variance was needed for an error in building location.

Mr. Fritz presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had support of his application from his neighbors and homeowners association. He also noted that the deck could only be seen by four homes and not from the street and if it had been constructed with the home originally 12 years prior, a variance would not be needed at this time.

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

Mr. Pammel moved to approve VC 2003-DR-049 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

JERALD FRITZ, TRUSTEE, VC 2003-DR-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.0 ft. from side lot line and to allow patio to remain 3.5 ft. and dwelling 9.8 ft. from side lot line. Located at 1850 Massachusetts Ave. on approx. 10,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 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 June 3, 2003; 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 proposed additions do not encroach into the side yard any more than currently exist.
4. The house was built on a substandard lot having only a width of 50 feet.
5. There was an error made of 2/10<sup>th</sup> of a foot on the western side of the property which is included as well in the variance request.
6. Not to grant the application would create a severe hardship upon the owners 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:

~ ~ ~ June 3, 2003, JERALD FRITZ, TRUSTEE, VC 2003-DR-049, continued from Page 506

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 upper deck; existing patio and existing dwelling shown on the plat prepared by Larry N. Scartz, dated December 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.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 June 11, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & SALLIE LARSEN, VC 2003-DR-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 7300 Hooking Rd. on approx. 20,331 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-1 ((18)) 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 Larsen, 7300 Hooking Road, McLean, Virginia, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. She stated that the applicant requested construction of an addition 10.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet; therefore, a variance of 5.0 feet was requested.

Mr. Larsen presented the variance request as outlined in the statement of justification submitted with the application. Mr. Larsen stated that the only a small portion of the addition came within 10 feet of the property line on the east side of the home. He stated that it would not affect any neighbors and would cause minimal impact. He noted that the homeowners association approved the request as well and asked for the Board's approval of the application.

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

Mr. Hart moved to approve VC 2003-DR-044 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

~ ~ ~ June 3, 2003, WILLIAM & SALLIE LARSEN, VC 2003-DR-044, continued from Page 507

WILLIAM & SALLIE LARSEN, VC 2003-DR-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 7300 Hooking Rd. on approx. 20,331 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-1 ((18)) 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 3, 2003; 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 the granting of a variance.
3. The proposal was very well done.
4. Although the lot itself is generally rectangular, the house is somewhat oddly placed on the lot, almost in the center of the lot and turned at an angle, so that almost any addition would be infringing on some setback requirement.
5. The addition has been designed staggered back from the front of the house and also staggered back from the approved building envelope, so that really only one corner protrudes into the minimum side yard.
6. Not only will no one be affected by the addition, the house and the addition are placed in such a way as to preserve some really magnificent trees and the existing vegetation around the addition, particularly along the property line on Outlot A. It would be very difficult to see the addition without walking around the side of the house.
7. Letters in support from the neighbor and the homeowners association confirm that there would not be any negative impact on 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.

~ ~ ~ June 3, 2003, WILLIAM & SALLIE LARSEN, VC 2003-DR-044, continued from Page 508

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Scott W. Sterl, dated January 22, 2003, 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 11, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES W. MITCHELL, SP 2003-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 8.9 ft. and eave 6.8 ft. from side lot line. Located at 2304 Stovepoint Ct. on approx. 18,751 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 12. (Moved from 6/17/03)

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 Mitchell, 2304 Stovepoint Court, Alexandria, Virginia, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, presented the request as contained in the staff report. She stated that the applicant requested a garage to remain 8.9 feet from the side lot line and eave to remain 6.8 feet from the side lot line. The Zoning Ordinance permits a minimum required side yard of 12.0 feet and 9.0 feet, respectively; therefore, modifications of 3.1 feet and 2.2 feet were requested.

Mr. Mitchell presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Mitchell stated that the property with the existing carport and the enclosure was constructed in 1969. He said he purchased the property in 1980. He explained that he did not get a building permit prior to beginning the carport enclosure because he assumed that because the structure was there already, he would have no zoning problem, but after he completed enclosing the carport, he applied for building and electrical permits and then was told that the error in building location existed. Mr. Mitchell stated that his neighbor, Eddie Beavers, who shared the common side yard, provided a letter of support. Mr. Mitchell said he did not check with the homeowner association, but had received no adverse comments from anyone. He said he believed there was no impairment to anyone and that it added to the property value and was an improvement to the cul-de-sac; and therefore, asked for the Board's approval of the application.

~ ~ ~ June 3, 2003, JAMES W. MITCHELL, SP 2003-MV-008, continued from Page 509

In response to questions by Mr. Hammack, Mr. Mitchell testified that the carport existed when he purchased the property in 1980 and that the error in building location occurred during the original construction in 1969.

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

Mr. Ribble moved to approve SP 2003-M-008 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JAMES W. MITCHELL, SP 2003-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 8.9 ft. and eave 6.8 ft. from side lot line. Located at 2304 Stovepoint Ct. on approx. 18,751 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 12. (Moved from 6/17/03). 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 3, 2003; 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.

~ ~ ~ June 3, 2003, JAMES W. MITCHELL, SP 2003-MV-008, continued from Page 510

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

1. This special permit is approved for the location of the addition shown on the plat prepared by Bryant L. Robinson of Alexandria Surveys International, LLC., dated January 6, 2003, as revised through March 20, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained within 45 days of approval of this special permit 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.

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 11, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        PETER & NANCY OLSON, VC 2003-BR-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 8203 Strong Spring Ct. on approx. 12,616 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-2 ((7)) 43. (Moved from 5/20/03 at applicants request)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Olson, 8203 Strong Spring Court, Annandale, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant requested approval to permit construction of a sunroom on an existing deck 15.0 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a variance of 10.0 feet was requested.

Mrs. Olson presented the variance request as outlined in the statement of justification submitted with the application. Mrs. Olson stated that the lot had an odd shape and that the position of their home on the lot required the need for the variance. She noted that positioning the sunroom on the existing deck was the most logical position for the addition and also preserved their back yard. She stated that all the neighbors supported the construction of the addition and noted that their signatures of approval were included in the original application filed, and requested the Board's approval of the application.

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

Ms. Gibb moved to approve VC 2003-BR-035 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER & NANCY OLSON, VC 2003-BR-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 8203 Strong Spring Ct. on approx. 12,616 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-2 ((7)) 43. (Moved from 5/20/03 at applicants request).

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

~ ~ ~ June 3, 2003, PETER & NANCY OLSON, VC 2003-BR-035, continued from Page 511

applicable State and County Codes and with the by-laws of 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 3, 2003; 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 should be granted based on the unusual shape of the lot and the fact that the sunroom will be placed on an existing deck and will not encroach further than what the deck already does.
4. Letters were received in support by the homeowners most affected by the proposal.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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, as shown on the plat prepared by Brian W. Smith, dated 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.



~ ~ ~ June 3, 2003, PETER & NANCY OLSON, VC 2003-BR-035, continued from Page 512

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 11, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M. CANTERBURY WOODS SWIM CLUB, INC., SPA 76-B-308 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 76-B-308 previously approved for a swim & tennis club to permit building addition, site modification and change in development conditions. Located at 5101 Southampton Dr. on approx. 3.56 ac. of land zoned R-3. Braddock District. Tax Map 70-3 ((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. Paul Wenner, Vice President of Operations for the Canterbury Woods Swim Club Pool Board, replied that it was.

William Sherman, Staff Coordinator, presented the special permit request as contained in the staff report. He stated that the applicant requested amendments to their original special permit requesting building additions, site modifications, and changes in the development conditions. Mr. Sherman stated that there was no change proposed to the number of members or hours of operation. The proposed building addition consisted of construction of an open shade pavilion to replace an existing structure. The proposal also included the construction of a 2,007 square foot expansion of the existing concrete deck, of which 1,705 feet would be located in the Resource Protection Area (RPA) as defined by the Chesapeake Bay Ordinance. The addition of the pervious surface would be offset by the removal and revegetation of six parking spaces currently located in the RPA. Mr. Sherman stated that this would require a change in the development conditions to allow a reduction from 134 to 128 required spaces. He stated that the proposal also included changes in development conditions to allow residents of neighboring Stone Haven Subdivision to become members. No change to the number of memberships was proposed. Mr. Sherman stated that staff recommended approval of the application subject to development conditions.

Mr. Wenner presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Wenner stated that the shade pavilion was to replace an existing structure and the deck addition was required because of a surge in membership, which was still below the maximum permitted. He noted that the RPA line would be accommodated by removing parking spaces which still was within the required number of spaces needed. He noted that there was no opposition from the community and asked for the Board's approval of the application.

Mr. Hart asked if pedestrian access was included in the request. Mr. Wenner replied that access existed since the parking lot was constructed.

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

Mr. Kelley moved to approve SPA 76-B-308 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

## SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CANTERBURY WOODS SWIM CLUB, INC., SPA 76-B-308 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 76-B-308 previously approved for a swim & tennis club to permit building addition, site modification and change in development conditions. Located at 5101 Southampton Dr. on approx. 3.56 ac. of land zoned R-3. Braddock District. Tax Map 70-3 ((8)) 5. 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 3, 2003; and

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

1. The applicants are the owners of the land.
2. The swim club has existing for over 35 years and is a valuable asset to the community.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, 5101 Southampton Road (3.56 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis, LLC dated December 27, 2002, revised April 14, 2003, 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 family memberships shall be 400, which shall be residents of this subdivision or Stone Haven subdivision.
6. The maximum hours of operation shall be from 9 A.M to 9 P.M. Any after hours parties shall be limited to six (6) per year with prior written permission from the Zoning Administrator.
7. Parking shall be provided as shown on the Special Permit Plat, and there shall be 40 parking spaces for bicycles, and an emergency lane to the pool.
8. The site shall be completely fenced with a chain link fence as approved by the Director of the

~ ~ ~ June 3, 2003, CANTERBURY WOODS SWIM CLUB, INC., SPA 76-B-308, continued from Page 514

Department of Public Works and Environmental Services.

9. The existing vegetation shall be maintained and shall be used to meet transitional screening requirements along all lot lines.
10. Prior to site plan approval, approval shall be obtained for an exception to allow uses in a Resource Protection Area (RPA) as defined by Chapter 118 of the Fairfax County Code, the Chesapeake Bay Preservation Ordinance. The area where parking spaces are removed shall be revegetated. The species, size and number of plant material shall be as determined appropriate by the Urban Forester. If the exception is not granted, the proposed concrete deck shall not be constructed.

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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 11, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M. REYNALDO S. DEGUZMAN, VC 2003-LE-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 6124 Squire La. on approx. 11,182 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (E) 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. Reynaldo DeGuzman, 6124 Squire Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant requested construction of a one-story addition to be located 5.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet; therefore, a variance of 7.0 feet was requested.

Mr. DeGuzman presented the variance request as outlined in the statement of justification submitted with the application. Mr. DeGuzman stated that the request for the addition was to provide accommodations for his aging parents in the future. He stated that the addition would not cause a negative impact on the neighborhood and noted that he had verbal support from his neighbors and asked for the Board's approval of the application. Mr. DeGuzman noted that the elevation of his home was extreme and impacted elderly people when visiting because of a steep incline of steps into the property.

Mr. Hammack asked if the addition could be reconfigured. Mr. DeGuzman stated that because of topography on the rear of the property all of his trees would have to be destroyed and therefore, the proposed request was the only location.

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

Mr. Hammack moved to deny VC 2003-LE-046 for the reasons stated in the Resolution.

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

REYNALDO S. DEGUZMAN, VC 2003-LE-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 6124 Squire La. on approx. 11,182 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (E) 21. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 3, 2003; and

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

1. The applicant wants to construct a substantial addition that is fairly high, adds a lot of bulk, and is adjacent to the adjoining property line, not only for a proposed garage, which would logically go in that place, but for extending it back to add an addition for his aging parents who may come to live with him at some point.
2. The rear of the addition, perhaps a garage, could be a one car garage without a variance.
3. The proposed addition to the rear appears to be a convenience.
4. The applicant has mentioned some topographical considerations but they don't seem to be strong enough to justify the extension into the rear of the property when it could, with a little reconfiguration, meet setback requirements.
5. The lot has 85 feet of frontage; all the lots in the neighborhood have that amount of frontage; they appear to be similar in size and this lot is not different from other lots.
6. A variance 5 feet from the side lot line is too close for a 35 foot addition to be constructed. Perhaps a variance could be supported for part of the proposed project, but not as it is currently proposed.

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.

~ ~ ~ June 3, 2003, REYNALDO S. DEGUZMAN, VC 2003-LE-046, continued from Page 516

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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. Pammel moved to waive the 12-month waiting period for refilling. 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 11, 2003.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN A. & MAUREEN O. LANDRY, SP 2003-SP-005 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 18.5 ft. from side lot line. Located at 12182 Queens Brigade Dr. on approx. 24,103 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-1 ((8)) 80.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steven Landry, 12182 Queens Brigade Drive, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the special permit request as contained in the staff report. She stated that the applicant requested a modification to the minimum yard requirements for certain R-C lots to permit construction of a one story sunroom addition to be located 18.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a modification of 1.5 feet is required.

Mr. Landry presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Landry stated that the addition would be 15 x 15 x 12 feet and stated that the placement of the home was irregular and the proposed location for the addition was the only logical place because of existing landscaping. He noted that the addition would be placed on the footprint of the existing deck and therefore, asked for the Board's approval of the application.

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

Mr. Pammel moved to approve SP 2003-SP-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

STEVEN A. & MAUREEN O. LANDRY, SP 2003-SP-005 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 18.5 ft. from side lot line. Located at 12182 Queens Brigade Dr. on approx. 24,103 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-1 ((8)) 80. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ June 3, 2003, STEVEN A. & MAUREEN O. LANDRY, SP 2003-SP-005, continued from Page 517

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 2003; 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.
6. The application was properly filed in accordance with all applicable requirements.
7. The request before the Board was very minimal.

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**.

1. This Special Permit is approved for the location of an addition shown on the plat prepared by Bryant L. Robinson, dated January 6, 2003, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

Mr. 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 11, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 3, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      BADREDDIN PLASEIED, VC 2003-SU-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of proposed Lot 1 which will contain 36,000 sq. ft. or less and fence greater than 4.0 ft. in height to remain in front yard. Located at 12202 Ox Hill Rd. on approx. 1.0 ac. of land zoned R-3. Sully District. Tax Map 46-3 ((1)) 2A.

~ ~ ~ June 3, 2003, BADREDDIN PLASEIED, VC 2003-SU-050, continued from Page 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. William B. Lawson, Jr., Agent, Barnes, Lawson & Frank, PC, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant requested construction of a swimming pool to remain in the front yard and to permit a 6-foot high fence which surrounded the existing swimming pool to remain in the front yard. The Zoning Ordinance prohibits the location of accessory structures in front yards on lots that contain 36,000 square feet or less and only permits 4-foot high fences to be located in a front yard; therefore, a variance of 2.0 feet was requested for the fence.

Mr. Lawson presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lawson stated that the Fair Oaks Estates Homeowners Association was to the east and west of the subject property. He stated that the application property was not incorporated into Fair Oaks Estates and noted that it was important that the entrance was displayed well because it was the only entrance into the community. He stated that there was no impact because it had existed for many years. Mr. Lawson noted that Ox Road was 59 feet in width in front of the application property, where it was only 50 feet in width everywhere else.

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

Mr. Hart moved to approve VC 2003-SU-050 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BADREDDIN PLASEIED, VC 2003-SU-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of proposed Lot 1 which will contain 36,000 sq. ft. or less and fence greater than 4.0 ft. in height to remain in front yard. Located at 12202 Ox Hill Rd. on approx. 1.0 ac. of land zoned R-3. Sully District. Tax Map 46-3 ((1)) 2A. 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 3, 2003; 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. It is a strange configuration of the lot and the street in that the road is oddly wider exactly at the place that the pool is located.
4. The pool has been there for 22 years without a problem.
5. The existing vegetation and fencing obscures the pool and there would be no significant impact on anyone for it to remain.

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

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

~ ~ ~ June 3, 2003, BADREDDIN PLASEIED, VC 2003-SU-050, continued from Page 519

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 swimming pool and fence shown on the plat prepared by Hamid Matin, dated December 18, 2002, as revised through April 26, 2003, submitted with this application and is not transferable to other land.
2. The wood fence and the chain link fence located near the property line will both 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. 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 11, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 3, 2003, (Tape 2), Scheduled case of:

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. (Def. from 10/1/02 1/14/03 and 4/1/03 per appl req.)

William Shoup, Zoning Administrator, stated that Appeal application A 2001-HM-021 dealt with a Notice of Violation which had been resolved because the tent as originally erected had been taken down and was



~ ~ ~ June 3, 2003, LAKESIDE INN OF RESTON, INC., A 2002-HM-021, continued from Page 520

reinstalled in two parts no longer requiring building permit approval. He stated that the current appeal related to the tent in its original form but the second appeal was considered withdrawn.

Kevin Guinaw, Branch Chief, Application Acceptance and Proffer Interpretation Branch, Zoning Evaluation Division, made staff's presentation as contained in the staff report. Mr. Guinaw stated that this appeal had previously been deferred to allow the applicant to file a development plan amendment application to resolve the issue; however, such application had not been filed and therefore, the appeal was necessary. Mr. Guinaw presented photographs to the Board showing the extent of the tent structure and noted that it had been removed in December. Mr. Guinaw reviewed the parameters of the development plan approved under Rezoning A-502. Mr. Guinaw stated that the tent structure erected was not in substantial conformance with the rezoning. The tent consisted of 2,158 square feet measuring 26 feet in width, 86 feet in length and 14.5 feet high. At times the tent had side flaps to enclose the dining space. The indoor restaurant was 4,000 square feet and the outdoor seating was approximately 2,000 square feet. Mr. Guinaw noted that the tent structure was not shown on the development plan and that it protruded onto the second story residences above the restaurant. He stated that staff's position was that a development plan amendment should be filed and reviewed by the Board of Supervisors.

Charles Sickels, Agent representing the applicant Lakeside Inn of Reston, Inc., gave the Board background concerning the use. He stated that the development plan had residential and commercial uses and that the issue was if the appellant was in substantial conformance to the development plan. He noted that the Ordinance allowed minor modifications when it did not interfere substantially with the use created. Mr. Sickels stated that the use since 1968 had been a restaurant with outdoor dining and stated that the only purpose of the tent cover was to cover the outdoor dining area. He stated that the size of the easement was the same as it had always been. He stated that the number of chairs and tables, the capacity of the outdoor dining, had not changed, only the covering over that area. Mr. Sickels stated that the Reston Association approved the structure with the restriction of the use of side flaps. Mr. Sickels provided the Board with letters from the properties directly above the restaurant stating their support and agreement that they did not have objection to the flaps on top of the tent which exceeded into their balconies. Mr. Sickels noted that previously 2,100 square feet of space was used using 10 x 12 umbrellas prior to the tent canopy. He also stated that from December 15 to March 15 the tent must be removed which made the use temporary. Mr. Sickels stated that the appellant would pursue a development plan amendment; however, in order to do so, the concurrence of Lake Anne Association had to be met, and they had refused to concur in the application. Mr. Sickels stated that the tent structure cost \$50,000 to erect. He stated that the Bylaws under the association recognized the use of the property and established the easement in the 80's.

Chairman DiGiulian called for speakers.

Raymond Diaz, Attorney with Rees, Broom & Diaz, representing Lake Anne of Reston Condominium Unit Holders Association came to the podium to speak in opposition to the appeal application. He stated that the appellants rented from the association and had an easement which extended 32 feet from the exterior surface of the unit. Mr. Diaz stated that the tent exceeded the easement area and encroached into the pedestrian area; therefore, violating the rights of other unit owners. Mr. Diaz stated that the Fairfax County Circuit Court made the determination that the easement area extend no further than 32 feet from the exterior of the unit. He stated that the original declaration was a 1981 document and the easement was created shortly thereafter. Mr. Diaz stated that the tents impeded views across the plaza and had affected the architecture of the area because of the bulk and mass of the tents, as opposed to standard umbrellas. Mr. Diaz gave the Board six letters from residents and owners of the plaza area, to include Martha Pennino and Robert Simon, opposing the appeal application.

The Board noted that the rezoning took place in 1962 and the easement was created in 1981, questioning why an amendment to the rezoning was not necessary. The Board asked staff to address the issue to determine if the developer acted in violation of the original rezoning with regard to the easement issue. The Board expressed their concern with regard to the 10-foot walkway easement.

Michael Miller, Chairman for the Commercial Covenants Committee for Lake Anne Condominium, stated that the tent structures were inappropriate in any capacity because of adverse impacts architecturally and historically noting that they were a visual impact in the summer months.

Eduardo Fobare, Chef and owner of Jasmine Café, adjacent to Il Cigno, represented 10 other merchants

~ ~ ~ June 3, 2003, LAKESIDE INN OF RESTON, INC., A 2002-HM-021, continued from Page 521

opposing the appeal request. He stated that the size of the tent structure dominated the plaza in an overbearing fashion and obstructed the view of properties who previously had unobstructed views of Lake Anne. He noted that if all property owners erected tents in front of their property, there would be no open space remaining. He stated that smaller umbrellas would be collapsible at the end of the day and remain down during inclement and cool weather and would be accepted by adjoining properties.

Victoria Reed, co-owner of Reston Used Bookshop, adjacent property to the restaurant, stated that there were procedures in place in the plaza that were averted by the owner of Il Cigno Restaurant from the beginning. She stated that the designer of the structure attended meetings where he could have advised affected owners of the structure to be built. She stated that two of the major sight lines for her business were completely obstructed by the erection of the tent structure.

Wayne Shiffelbine, member of the five-person Board of Directors for Lake Anne of Reston, presented photographs to the Board showing the restaurant when umbrellas were used. He stated that the condominium association owned the plaza and surrounding brick pavement, as well as various parking lots that served the center. He stated that the condominium represented the interest of 130 individual residential owners and approximately 20 businesses located on the plaza. Mr. Shiffelbine reviewed the number of owners affected by the visual impact of the tent structure.

Martha Green, President of Lake Anne of Reston Condominium Association, read a letter to the Board from Supervisor Martha Pennino sharing the history of Reston and Lake Anne, expressing her opposition to the tent structure. The letter referred to an Ordinance introduced in 1981 designating Lake Anne a historic zone within the County, specifically noting an amendment to the development plan to comply with more rigorous requirements of historic zoning.

The Board expressed concern about amendments to the original development plan. Mr. Guinaw replied that the plan before the Board was the governing development plan, which had been amended numerous times.

Eve Thompson, Vice President of Lake Anne Condominium Association Board, read a letter to the Board from Robert Simon and Cheryl Teria expressing their opposition to the tent structure.

Alice Pascal, Lawrence Drive, resident of Lake View Condominium, opposed the tent structure stating that it ruined the aesthetics of the plaza and it was much more than needed to protect diners from inclement weather.

Mr. Sickels rebutted the opposition stating that he could obtain more information regarding the walkway easement; however, that the scope of the Board was to determine if the Zoning Administrator was correct in its determination of the use.

Mr. Hart asked staff if Attachment 3 in the staff report was the original development plan or a later amendment. Mr. Guinaw stated that it was the governing development plan for the Lake Anne Plaza. He stated that A-502 had multiple components which could have been reflective on the development plan or in other formats; however, the plan before the Board was the governing plan. Mr. Hart expressed concern if the plan was amended in 1985 if it was the same plan before the Board.

Mr. Pammel moved to defer decision for 30 days to July 8, 2003, at 9:30 a.m., to allow staff the opportunity to provide additional information relative to amendments that had occurred over the years. Mr. Ribble seconded the motion, which carried by a vote 7-0.

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~ ~ ~ June 3, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
Zoroastrian Center and Darb-E-Mehr of Metropolitan Washington, D.C., SP 00-H-026

Mr. Ribble moved to approve 30 months of Additional Time. Mr. Kelley seconded the motion, which carried by a vote of 4-1. Mr. Pammel voted against the motion. Ms. Gibb and Mr. Hammack were not present for

~ ~ ~ June 3, 2003, AFTER AGENDA ITEMS, continued from Page 522

the vote. The new expiration date was January 24, 2006.

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~ ~ ~ June 3, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
Cub Run Baptist Church/Cub Run Primitive Baptist Church, SP 97-Y-029 and VC 97-Y-058

Mr. Hart moved to approve 24 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were not present for the vote. The new expiration date was February 12, 2005.

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~ ~ ~ June 3, 2003, (Tape 2), After Agenda Item:

Approval of May 27, 2003 Resolutions

Mr. Pammel moved to approve the May 27, 2003 Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack 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 11:58 a.m.

Minutes by: Deborah A. Hedrick

Approved on: October 5, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 10, 2003. The following Board Members were present: Chairman John DiGiulian; Robert Kelley; Nancy Gibb; John Ribble; James Hart; and James Pammel. Paul Hammack 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.

~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ISOP CHUNG, VC 2003-MA-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into three lots and an outlot with proposed Lot 3 having a lot width of 1.0 ft. Located at 5812 Colfax Ave. on approx. 1.45 ac. of land zoned R-3. Mason District. Tax Map 61-4 ((1)) 133.

Chairman DiGiulian noted that VC 2003-MA-048 had been indefinitely deferred at the applicant's request.

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ASOK K. SARKAR, VC 2003-MV-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from rear lot line and 7.3 ft. from side lot line. Located at 7902 Cranford Farm Ci. on approx. 5,000 sq. ft. of land zoned PDH-8. Mt. Vernon District. Tax Map 113-2 ((7)) 131.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Asok K. Sarkar, 7902 Cranford Farm Circle, Lorton, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a sunroom addition 5.7 feet from the rear lot line and 7.3 feet from a side lot line. A minimum rear yard of 20 feet and a minimum side yard of 8.0 are required; therefore, variances of 14.3 feet and 0.7 feet, respectively, were requested.

Mr. Sarkar presented the variance request as outlined in the statement of justification submitted with the application. He said the addition of an enclosed deck with screening and sliding doors was requested because his property was located close to a waste treatment plant which had an offensive odor during the summer.

Chairman DiGiulian asked how the screening would help with the odor. Mr. Sarkar replied that there would be screening and sliding glass.

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

Mr. Pammel moved to deny VC 2003-MV-053 for the reasons stated in the Resolution.

Mr. Hart stated that he supported the motion, and he noted that the subject lot was approximately the same shape and size with the same placement of the houses as the majority of the lots in the subdivision. He said it was mathematically possible to do single-family houses at a PDH-8, but the conditions created resulted in unusable yard spaces. Mr. Hart said the proposed further intrusion into the rear yard would aggravate a bad situation. He stated that if an ordinary rectangular lot that was the same as the others in the subdivision was allowed to do that, all of the other houses would have the same condition or similar entitlement.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

~ ~ ~ June 10, 2003, ASOK K. SARKAR, VC 2003-MV-053, continued from Page 525

ASOK K. SARKAR, VC 2003-MV-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from rear lot line and 7.3 ft. from side lot line. Located at 7902 Cranford Farm Ci. on approx. 5,000 sq. ft. of land zoned PDH-8. Mt. Vernon District. Tax Map 113-2 ((7)) 131. 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 10, 2003; and

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

1. The applicant is the owner of the land.
2. This is a case of overbuilding of a single-family lot. The FAR on the property is at least 1.0, and to add any further expansion or development of the property would carry it over 1.0. The (high) FARs are of a commercial and industrial nature. Further expansion on this property could not be supported because of its bulk and density.
3. The proposed addition would impact the adjoining property.
4. The applicant has not met the hardship standards as prescribed by the standards for granting 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**.

~ ~ ~ June 10, 2003, ASOK K. SARKAR, VC 2003-MV-053, continued from Page 526

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 June 18, 2003.

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. and eave 2.5 ft. from side lot line. Located at 11808 Mallard Rd. on approx. 37,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-2 ((2)) 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. John Link, 11808 Mallard Road, Lorton, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an accessory structure, consisting of a detached garage, 4.0 feet from a side lot line with an eave 2.5 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves may encroach into the minimum yard by 3.0 feet; therefore, a variance of 16 feet for the structure and 14.5 feet for the eave was requested.

Mr. Hart asked staff if the addition would be by right had both Lots 74 and 75 been listed on the permit together. Ms. Stanfield replied affirmatively.

Mr. Hart noted that on the tax map there appeared to be a stream on Lot 75. He asked if that was associated with a Resource Protection Area (RPA). Ms. Stanfield replied that she did not know if there was a RPA, but she said the tax records indicated it could not be developed.

Mr. Link presented the variance request as outlined in the statement of justification submitted with the application. He said the only other area on the lot that the addition could be built on would be to the back, but it would require the removal of six to twelve trees and would be within 40 to 50 feet of the back of his neighbor's house. Mr. Link stated that he also owned the lot to the north that had a waterway on it that could not be built upon. He said that the granting of the variance would be in keeping with the characteristics of the overall neighborhood.

Mr. Hart questioned the applicant regarding the dimensions and capacity of the garage addition, to which Mr. Link replied that the dimension of the 3-car garage would be 40 by 30 feet.

Mr. Hart noted that there was an existing 2-car garage, and he asked if the proposed garage could be shifted to the left and be attached to the house. Mr. Link replied that it was possible.

Mr. Hart stated that he had concern about the proposed width of the detached garage in light of the existence of the 2-car garage resulting in a structure double the size of most requests presented to the BZA. He asked, if a decision was deferred by the BZA, would the applicant be willing to redesign the addition so it would be narrower or shift it so it touched the house and was further from the lot line. Mr. Link replied that it was a possibility, but he added that he had been informed that he could join the two lots together and there would be no problem.

Mr. Hart said it was also a concern of his that even though the other property was currently classified as unbuildable, that could change. He commented that if the lots were joined together, the addition would be built by-right.

Mr. Hart asked how long it would take the applicant to revise the plans. Mr. Link replied that he could probably do it within a week.

~ ~ ~ June 10, 2003, JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047, continued from Page 527

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

Mr. Pammel stated that he also was concerned about the 40-foot width for a 3-car garage, which he said was excessive. He said that although it would be expensive to put in an appropriate sewage system on Lot 75 so it could be developed, it could be done, and if it was developed in the future, the proposed addition would be too much building adjacent to it.

Mr. Kelley asked staff if the applicant had been advised that he could merge the lots and build the addition by right. Ms. Stanfield replied that the discussion did not take place.

Mr. Hart moved to defer decision on VC 2003-MV-047 to July 1, 2003, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:00 A.M. PATRICIA A. AVERY & HELEN S. CHANG, VC 2003-SU-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. from rear lot line. Located at 3812 Wheatgrain La. on approx. 6,747 sq. ft. of land zoned PDH-3. Sully District. Tax Map 45-2 ((11)) 230.

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 Libcke, the applicant's agent, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a patio enclosure, 10.7 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 14.3 feet was requested.

Mr. Libcke presented the variance request as outlined in the statement of justification submitted with the application. He stated that the subject property was an irregularly shaped lot that backed up to the Fairfax County Parkway barrier wall. He said there was an existing deck on which the proposed addition would be built. Mr. Libcke said the proposed addition would not have an impact on any of the neighbors.

Mr. Hart noted that the house was near a storm drain easement and asked whether there was a setback from the easement. Ms. Shulenberger replied that there was no setback.

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

Mr. Ribble moved to approve VC 2003-SU-054 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICIA A. AVERY & HELEN S. CHANG, VC 2003-SU-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. from rear lot line. Located at 3812 Wheatgrain La. on approx. 6,747 sq. ft. of land zoned PDH-3. Sully District. Tax Map 45-2 ((11)) 230. 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 10, 2003; and



~ ~ ~ June 10, 2003, PATRICIA A. AVERY & HELEN S. CHANG, VC 2003-SU-054, continued from Page 528

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

1. The applicants are the owners of the land.
2. The applicant has satisfied the nine standards required for a variance.
3. The property abuts the Fairfax County Parkway and a barrier wall.
4. The house is sited such that a variance is needed for an addition.
5. The lot is irregularly shaped.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Bryant L. Robinson of Alexandria Surveys International, LLC, dated December 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 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

~ ~ ~ June 10, 2003, PATRICIA A. AVERY & HELEN S. CHANG, VC 2003-SU-054, continued from Page 529

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

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:00 A.M.        HECTOR D. URANGA-URIAS, SP 2003-PR-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 1.6 ft. and 0.9 ft. from side lot lines and 14.2 ft. from rear lot line and deck 0.0 ft. from rear lot line and 0.9 ft. from side lot line. Located at 2037 Madrillon Springs Ct. on approx. 1,760 sq. ft. of land zoned R-12. Providence District. Tax Map 39-2 ((44)) (1) 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. Hector Uranga-Urias, 2037 Madrillon Springs Court, Vienna, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to reduce the minimum yard requirements based on an error in building location to permit an addition to remain 1.6 feet and 0.9 feet from the side lot line and 14.2 feet from the rear lot line. The addition is a deck with a screening fence and trellis. The applicant also requested a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 0.0 feet from the rear lot line and 0.9 feet from the side lot line. The deck is a stone patio at grade. The minimum required side yard and rear yard is 10 feet and 20 feet, respectively; therefore, modifications of 8.4 feet, 9.1 feet, and 5.8 feet were requested for the addition, and modifications of 5.0 feet and 4.1 feet were requested for the deck.

Ms. Gibb asked if the stone patio would have been a violation five years ago. Ms. Shulenberger replied that it would have always been a violation.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the definition of deck included patios; therefore, the patio has to meet the rear yard requirements. She said if the patio was not attached to the house, it would be considered an accessory structure, and as long as it was under 7.0 feet in height, there would be no rear yard requirements.

Ms. Gibb asked if it would be legal if there was a one-inch gap between the stone patio and the house. Ms. Langdon replied affirmatively.

Ms. Gibb asked if that interpretation had always existed. Ms. Langdon replied affirmatively.

Ms. Gibb asked if the stone patio was flush to the house. Bruce Miller, Zoning Enforcement Branch, stated that it was not observed at the time of the inspection, and a Notice of Violation was not issued on the stone patio.

Ms. Langdon explained that anything that was shown on the plat that was submitted through application acceptance that did not meet the requirements was added to the application.

Mr. Uranga-Urias presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the wood deck, which was constructed in 1996, was built with screen lattice work that was not included in the construction company's application for the building permit. He said that during a later inspection it was found to be outside the definition of an open deck, and since it was considered to be a structure, the stone patio then was defined as a deck.

~ ~ ~ June 10, 2003, HECTOR D. URANGA-URIAS, SP 2003-PR-007, continued from Page 530

Mr. Uranga-Urias said the work was commissioned by a previous owner, who he believed acted in good faith and had also obtained the approval of the homeowners association. He stated that the deck and patio existed when he purchased the property in 2001. He said he did not believe the addition obstructed the views or impacted the enjoyment and use of the neighboring properties.

Ms. Gibb asked if the stone patio was flush against the house. Mr. Uranga-Urias replied affirmatively.

Mr. Hart asked if a building permit would have been required for the lattice or trellis if it had been built at a time later than when the wood deck was built. Ms. Langdon replied that once you have gone above the allowed railing by doing the lattice work, it would be defined as a covered deck or an addition rather than an open deck and would have to meet other yard requirements.

Ms. Langdon confirmed Mr. Hart's comment that no building permit would be required for a patio, but a variance could be required if it touched the house. She stated, as an example, an accessory structure such as a shed under 150 square feet in size would not require a building permit, but it would have to meet yard requirements depending on the height.

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

Ms. Gibb moved to approve SP 2003-PR-007 for the reasons stated in the Resolution.

Ms. Gibb stated that she was convinced the applicant was entitled to the special permit because the stone patio adjoined open space and would not require a permit or variance if it had been slightly detached from the house. She said it was built by a previous owner, a mistake was made in good faith, there was no impact on any neighbor, and it was very attractive.

Regarding the trellis, Ms. Gibb said it was designed for privacy, but it was only on one corner and part of one side of the deck, it was approved by the homeowners association, it was built by a previous owner, and no one spoke at the hearing as to any impact. She said the property backed up to homeowners association property, and there was a tree in front of part of the trellis.

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## COUNTY OF FAIRFAX, VIRGINIA

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

HECTOR D. URANGA-URIAS, SP 2003-PR-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 1.6 ft. and 0.9 ft. from side lot lines and 14.2 ft. from rear lot line and deck 0.0 ft. from rear lot line and 0.9 ft. from side lot line. Located at 2037 Madrillon Springs Ct. on approx. 1,760 sq. ft. of land zoned R-12. Providence District. Tax Map 39-2 ((44)) (1) 40. 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 10, 2003; 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;

~ ~ ~ June 10, 2003, HECTOR D. URANGA-URIAS, SP 2003-PR-007, continued from Page 531

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

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

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

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

- 1. This special permit is approved for the location of the addition (deck with screening fence and trellis) and deck (stone patio) shown on the plat prepared by Sam Whitson, L.S. / Land Surveying dated February 4, 2003, as revised through February 5, 2002, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained within 30 days of approval of this special permit for the deck 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.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN T. & PEGGY M. MORRIS, VC 2003-BR-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line such that side yards total 15.9 ft. Located at 9021 Windflower La. on approx. 8,564 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 97.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Morris, 9021 Windflower Lane, Annandale, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant

~ ~ ~ June 10, 2003, JOHN T. & PEGGY M. MORRIS, VC 2003-BR-051, continued from Page 532

requested a variance to permit construction of a garage addition 6.7 feet from the side lot line such that side yards total 15.9 feet. A minimum side yard of 8.0 feet and total side yards of 20.0 feet are required; therefore, variances of 1.3 feet and 4.1 feet, respectively, were requested.

Mr. Morris presented the variance request as outlined in the statement of justification submitted with the application. He stated that at the time he had purchased the home in August of 1991, it had very little storage. He said that over the past 12 years, they had made numerous interior and exterior improvements, but a major remodel would be needed to upgrade the 27-year-old structure. Mr. Morris explained that the project would consist of a total kitchen remodel, which would require the extension of the living and dining room wall out seven feet into the rear yard, upgrade of a master bathroom, redoing the porch area, and conversion of the existing carport into a garage.

Mr. Morris stated that his lot was dimensionally irregular and was uniquely flanked by small, narrow lots, which resulted in an extraordinary condition that limited further reasonable development of his property. He said his home was built on the fifth smallest lot in Section 2, with all five lots within 115 square feet of each other. He stated that his home was one of only seven of the 71 homes in the section that was originally designed with an attached carport, of which five of the seven had a side yard total minimum clearance varying between 15.9 to 19.4 feet, three of which, including the subject property and one neighbor, had a side yard less than the required 8.0 feet but greater than the minimum 5.0 feet allowed for carports in a cluster subdivision. Mr. Morris said that was a unique condition that did not occur elsewhere in the section. He stated that the proposed subject side yard dimension would not be any less than the smallest side yard dimension currently in the section.

Mr. Morris stated that the narrowness of the lot and the topographic features of the back yard restricted the relocation or redesign of the proposed garage to any location where a variance would not be necessary. He said no other property in the section had such a small lot size with the side yard zoning constraints as his and his neighbor. He stated that a strict application of the Zoning Ordinance would produce an undue hardship because it would prohibit redevelopment of the existing structure to keep it within the building characteristics of the remaining 92 percent of the other homes in the section.

Mr. Morris said he had spoken with his neighbors and had received no negative comments or reservations about the proposal to enclose the carport into a garage/storage area.

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

Mr. Kelley moved to approve VC 2003-BR-051 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN T. & PEGGY M. MORRIS, VC 2003-BR-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line such that side yards total 15.9 ft. Located at 9021 Windflower La. on approx. 8,564 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 97. 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 10, 2003; and

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

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.

3. Considering the amount of work being done, it is a modest variance.
4. The applicant made a well-prepared oral statement and a very well-written justification.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 William E. Ramsey, dated February 26, 2003, revised March 12, 2003, 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. Hammack was absent from the meeting.

~ ~ ~ June 10, 2003, JOHN T. & PEGGY M. MORRIS, VC 2003-BR-051, continued from Page 534

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:00 A.M. DENNIS O'CONNOR, VCA 83-P-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. and eave 4.1 ft. from rear lot line. Located at 2703 Willow Dr. on approx. 13,996 sq. ft. of land zoned R-2 (Cluster). Providence District. Tax Map 37-4 ((18)) 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. Dennis O'Connor, 2703 Willow Drive, Vienna, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance amendment to permit construction of an addition 5.5 feet with an eave 4.1 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves may extended into the minimum required yard by 3.0 feet; therefore, variances of 19.4 feet and 17.9 feet, respectively, were requested.

Mr. Hart asked where the Resource Protection Area (RPA) line was located on the subject lot. Mr. Sherman replied that under the current Ordinance, there was no RPA on the subject lot. A discussion ensued between Mr. Hart, Ms. Langdon, and Mr. Sherman regarding the future changes which would result from the Chesapeake Bay Act, the mapping of the RPA, and the handling of properties affected by the RPA.

Mr. O'Connor presented the variance amendment request as outlined in the statement of justification submitted with the application. He said the reason for requesting the variance was to add a first-floor master bedroom to the home. He stated that the subject property was his intended home for life. Mr. O'Connor explained that he had both knees replaced and was having back problems. He added that his wife was also starting to experience problems with her knees. He said the proposed addition would allow them to live in a healthful environment.

Mr. Hart asked if the first-floor addition would be up in the air. Mr. O'Connor replied that there would be a sub-basement structure so that it would remain on the same level as the rest of the house.

Mr. Hart asked if the floor of the addition would be level with the first floor of the house with a basement below it. Mr. O'Connor replied affirmatively.

Mr. Hart asked if the applicant had considered other locations on the lot for the addition, specifically to either end of the house toward the back. Mr. O'Connor said that to go out to the left side of the house would require locating a bedroom on the other side of a chimney, and it would need a side lot line variance. He said to go to the right side, the garage would have to be converted to a bedroom and then another garage added, which would also impose on the side lot line. Mr. O'Connor explained that to make it less obvious and intrusive to the neighborhood, the location in the back was the best place because it backed up to land that could not be built upon. He stated that there was 150 to 200 yards between the rear of his house and the next neighborhood.

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

Mr. Pammel moved to approve VCA 83-P-191 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

~ ~ ~ June 10, 2003, DENNIS O'CONNOR, VCA 83-P-191, continued from Page 535

DENNIS O'CONNOR, VCA 83-P-191 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. and eave 4.1 ft. from rear lot line. Located at 2703 Willow Dr. on approx. 13,996 sq. ft. of land zoned R-2 (Cluster). Providence District. Tax Map 37-4 ((18)) 5. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 10, 2003; and

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

1. The applicant is the owner of the land.
2. This is an unusual lot with an unusual configuration.
3. The depth of the lot from the cul-de-sac to the rear property line is approximately 82 feet, making it a very shallow lot.
4. The width of the lot is approximately 140 feet, using the front lot line of the residence.
5. The fact that it's a side-load garage and a driveway on the side of the house makes it difficult to locate a structure in any other location without major modifications, including perhaps converting the existing garage and then adding a garage in another location, which would obviously be much more time-consuming, expensive, and will alter the appearance of the structure.
6. The applicant made an adequate justification as to why he is seeking the variance.
7. Rocky Branch, a tributary to Difficult Run, is located to the rear of the property.
8. It's 150 feet or more to the adjoining northeast neighborhood.
9. The applicant has satisfied the requirements 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



~ ~ ~ June 10, 2003, DENNIS O'CONNOR, VCA 83-P-191, continued from Page 536

interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 January 17, 2003 and revised March 10, 2003, 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. Mr. Hammack was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 18, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 10, 2003, (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. 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. (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 and 7/2/02 and 12/10/02).

Chairman DiGiulian noted that the applicant had requested an indefinite deferral of SPA 84-M-009-2.

Mr. Hart gave a disclosure and stated that it would not affect his ability to participate in the case.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the request, which had been received one day prior to the hearing, was to defer the case for as long a period as possible, and there had been no contact with the agent regarding a specific time frame. She suggested moving the case to December 16, 2003.

Mr. Pammel said he was uncomfortable with that length of a deferral, but if the Board so chose, he requested staff input regarding the status in three months.

Mr. Hart noted that the correspondence indicated that since the public hearing, another 50 to 75 parking spaces had been deleted. Ms. Langdon explained that the parking spaces were on a service drive that they were not allowed to use and were not required parking spaces onsite.

Mr. Hart said regardless of whether they were allowed, there was a pattern that they were used and a history of parking problems in the neighborhood. He explained that his concern was that it had been quite some time since the public hearing, and the staff report was two years old. He said it was deferred for decision only, but because of the changes with parking in the neighborhood and the passage of time, people should

~ ~ ~ June 10, 2003, DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2, continued from Page 537

be allowed to speak again.

Chairman DiGiulian requested an updated staff report.

Mr. Pammel moved to defer SPA 84-M-009-2 to December 16, 2003, at 9:00 a.m., with the request that staff provide an update in mid to late September 2003. Ms. Gibb seconded the motion.

Mr. Hart asked for clarification as to whether testimony would be allowed in December or if it would be for decision only.

Mr. Pammel said the case was at decision only, but if there was an update and different proposals pending at that time, it would involve an amendment to the application. He said at this point, the Board was considering what they heard, and if there were any changes, there would have to be a hearing, but if it's based on what had been heard and there were no changes, the Board would move on with the decision.

Chairman DiGiulian said there would have to be changes because parking needed to be provided.

Mr. Pammel said if that were the case, there would have to be further public comment.

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

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:30 A.M. KEUN JUNG KIM, A 2003-SP-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that zoning approval for Building Permit issuance cannot be granted for appellant's lot pursuant to Sect. 18-603 of the Zoning Ordinance absent verification that the lot was created in conformance with applicable Subdivision regulations. Located at 6823 Union Mill Rd. on approx. 3.20 ac. of land zoned R-C and WS. Springfield District. Tax Map 74-2 ((1)) 9.

Chairman DiGiulian informed the Board members that staff was recommending dismissal because the notices for the case were not in order.

Mike Adams, Zoning Administration Division, explained that the appeal involved a determination that zoning approval for building permit issuance could not be granted for the appellant's lot, pursuant to Section 18-603 of the Zoning Ordinance, absent verification that the lot was created in conformance with the applicable Subdivision Ordinance regulations. During the preparation of the appeal, the Board of Supervisors adopted an amendment to the Subdivision Ordinance on May 5, 2003. Upon coordination with Department of Public Works and Environmental Services (DPWES), it was determined that the creation of Lot 9 complied with the Subdivision Ordinance as amended. Mr. Adams said that on May 16, 2003, staff sent a letter notifying the appellant of the adopted amendment and new determination and indicated that as a result, the determinant issue of the appeal was moot. It was requested that the appellant send a letter withdrawing the appeal. In subsequent conversations, the appellant indicated that he did not wish to withdraw the appeal and preferred the BZA still consider the matter; however, coordination with the Clerk to the BZA revealed that the appellant failed to mail the required public hearing notices. Since Lot 9 is a buildable lot and the public hearing could not proceed because the notices were not sent, staff recommended that the BZA acknowledge the May 16, 2003, determination and dismiss the appeal.

Chairman DiGiulian called the appellant to the podium and asked if he would like to speak. Keun Jung Kim, 6823 Union Mill Road, Clifton, Virginia, replied that he would.

Mr. Kim said he had spoken with County personnel for the last year and four months and had been given a runaround and different answers. He said he was told it was a buildable lot and then told it was illegally cut and was not a buildable lot. Mr. Kim said he had not received the packet from the Clerk to send the notices. He said he came to the hearing to make sure it was a buildable lot.

Chairman DiGiulian asked the appellant if he had received the letter from DPWES saying it was a legal lot.

~ ~ ~ June 10, 2003, KEUN JUNG KIM, A 2003-SP-021, continued from Page 538

Mr. Kim said he had received the letter, but it was not signed by Mike Adams and had no power of attorney attached to it.

Mr. Pammel moved to dismiss A 2003-SP-021. He said, based on the testimony of the Zoning Administrator, the issue was moot, the appellant had a buildable lot, and he should proceed to get a building permit. Mr. Ribble seconded the motion.

Ms. Gibb explained to the appellant that the letter was signed by William Shoup, Zoning Administrator, and was a valid letter which showed that the appellant's property was a buildable lot.

Mr. Hart asked the appellant if Mr. Baskin was his attorney, to which Mr. Kim answered affirmatively. Mr. Hart said that Mr. Baskin could explain to the appellant that he has what he needs.

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

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~ ~ ~ June 10, 2003, (Tape 1), Scheduled case of:

9:30 A.M. FAI OLD CENTREVILLE LLC, A 2003-SU-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the shopping center on property located at Tax Map 54-4 ((1)) 87C has frontage on only one major thoroughfare and, therefore, only one freestanding sign may be erected in accordance with Zoning Ordinance provisions, and that there is no nonconforming right to allow two freestanding signs to be located on the property. Located at 13810 Braddock Rd. on approx. 15.89 ac. of land zoned C-6, C-8, HC and SC. Sully District. Tax Map 54-4 ((1)) 87C and 87F.

Mr. Hart gave a disclosure and stated that it would not affect his ability to participate in the case.

Chairman DiGiulian informed the Board members that there was a deferral requested for the case.

Mr. Ribble made a motion to defer A 2003-SU-023 to July 8, 2003. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ June 10, 2003, (Tape 1), After Agenda Item:

#### Approval of July 30, 2002 Minutes

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

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~ ~ ~ June 10, 2003, (Tape 1), After Agenda Item:

#### Request for Reconsideration Jerry and Lisa Jarosik, VC 2003-HM-045

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that Mr. Jarosik was present if the Board would like him to speak.

Ms. Gibb commented that the applicant had submitted a lengthy letter noting a corrected percentage increase from the original size, 22% as opposed to 60% increase in dwelling space. She stated that was not the basis, in large part, for the Board's ruling. She said, regardless of the percentage, it was very large along the boundary line. She noted that the one-year waiting period to re-file had been waived and suggested they re-file with a different plan.

~ ~ ~ June 10, 2003, AFTER AGENDA ITEMS, continued from Page 539

Mr. Hart said he agreed with Ms. Gibb and noted that on the first page of the reconsideration letter, the applicants stated that what they were applying for was somewhat larger than what they really needed. He said if it can be scaled back, with the waiving of the one year, the Board would take that in turn.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ June 10, 2003, (Tape 1), After Agenda Item:

Request for Reconsideration  
Wallace T. Sansone regarding Jerald Fritz, VC 2003-DR-049

Mr. Hart asked staff who the attorney was for the case. Ms. Langdon replied that the applicant had represented himself. Mr. Hart said he did not need to do a disclosure.

Mr. Pammel noted that the decision was unanimous, 7-0.

No motion was made; therefore, the request for reconsideration was denied.

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~ ~ ~ June 10, 2003, (Tape 1), After Agenda Item:

Approval of June 3, 2003 Resolutions

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

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As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

Minutes by: Kathleen A. Knoth

Approved on: October 12, 2004

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

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 17, 2003. 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.

Mr. Kelley indicated that he had submitted his letter of resignation to the Circuit Court. He thanked the court for their appointments throughout the years and the other Board Members. Mr. Kelley stated that being a BZA member had been a rewarding experience.

Chairman DiGiulian thanked Mr. Kelley for his service on the Board.

There were no other Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case

~ ~ ~ June 17, 2003, (Tape 1), Scheduled case of:

9:00 A.M. EUGENE P. & CAROL L. O'DONNELL, VC 2003-DR-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 6910 Southridge Dr. on approx. 11,844 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 6A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eugene O'Donnell, 6910 Southridge Drive, McLean, Virginia, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 6.2 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 5.8 feet was requested.

Mr. O'Donnell presented the variance request as outlined in the statement of justification submitted with the application. He said there was no other place for the addition and it would compliment the neighborhood.

Mr. Hammack asked what was located in the rear of the property. Mr. O'Donnell replied that there was nothing in the rear yard.

Mr. Hammack indicated that he was concerned about the size and bulk of the addition. He asked if the addition could be reconfigured. Mr. O'Donnell stated that reconfiguration would affect two chimneys. He said the proposed addition did not face the living space on the adjacent property. Mr. O'Donnell stated that the neighbors were in support of the application.

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

Mr. Hammack moved to deny the application. He stated that there was no justification for the bulk and length of the addition. Mr. Hammack stated that the proposed two-story addition was 48 feet long and 6.2 feet from the lot line. He said the lot line extended in front of the neighbor's property. Mr. Hammack said the applicant did not explain why the addition could not be placed in the rear yard. He said the variance standards were not satisfied and the request appeared to be for convenience.

Mr. Pammel seconded the motion. The motion failed by a vote of 3-4. Chairman DiGiulian, Ms. Gibb, Mr. Kelley, and Mr. Ribble voted against the motion.

Ms. Gibb moved to approve VC 2003-DR-063 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

~ ~ ~ June 17, 2003, EUGENE P. & CAROL L. O'DONNELL, VC 2003-DR-063, continued from Page 541

EUGENE P. & CAROL L. O'DONNELL, VC 2003-DR-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 6910 Southridge Dr. on approx. 11,844 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 6A. 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 17, 2003; 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 indicates that they have met the required standards for a variance.
3. The impact is minimal.
4. At the rear lot line, the addition would only be 1.2 feet into the building restriction line and continues to gradually move into the building restriction line.
5. There is a chimney present in the addition, which is a good reason to have the garage be 22 feet wide.
6. The subject lot has 2 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

~ ~ ~ June 17, 2003, EUGENE P. & CAROL L. O'DONNELL, VC 2003-DR-063, continued from Page 542

limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Curtis L. McAllister, dated February 14, 2003, as revised through April 14, 2003, 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 4-3. Mr. Pammel, 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 June 25, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 17, 2003, (Tape 1), Scheduled case of:

9:00 A.M. CECILIA & ANTON OP DE BEKE, VC 2003-PR-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.4 ft. and deck 20.0 ft. from front lot line. Located at 1017 Kennedy St. on approx. 10,854 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((5)) 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. Krista M. Schauer, 3336 Tennyson St. NW, Washington, D.C., replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 25.4 feet and a deck 20 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, variances of 4.6 feet and 10 feet were requested respectively.

Ms. Schauer, agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the house was built in 1953 and the owners wanted to add a front foyer and a mud room on the side. Ms. Schauer said a variance was granted in 1950 but the builder never implemented the previous variance.

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

Ms. Pammel moved to approve VC 2003-PR-055 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CECILIA & ANTON OP DE BEKE, VC 2003-PR-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 25.4 ft. and deck 20.0 ft. from front lot line. Located at 1017 Kennedy St. on

~ ~ ~ June 17, 2003, CECILIA & ANTON OP DE BEKE, VC 2003-PR-055, continued from Page 543

approx. 10,854 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((5)) 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 June 17, 2003; 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.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 and deck shown on the plat prepared by Krista Minotti Schauer, dated November 26, 2002, as revised through March 6, 2003, 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.



~ June 17, 2003, CECILIA & ANTON OP DE BEKE, VC 2003-PR-055, continued from Page 544

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

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

Mr. Hammack seconded the motion, which carried by a vote of 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 25, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 17, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH L. PALMATEER, SP 2003-LE-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 accessory structures to remain 7.2 ft. from rear lot line, 3.6 ft. with eave 2.8 ft. from rear lot line, 1.4 ft. with eave 0.3 ft. from rear lot line and 1.9 ft. from side lot line. Located at 5701 Clermont Dr. on approx. 32,985 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((5)) 1. (Concurrent with VC 2003-LE-056).

9:00 A.M. JOSEPH L. PALMATEER, VC 2003-LE-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to cover more than thirty (30) percent of the minimum required rear yard and to permit two accessory storage structures greater than 200 sq. ft. and outdoor storage greater than 100 sq. ft. Located at 5701 Clermont Dr. on approx. 32,985 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((5)) 1. (Concurrent with SP 2003-LE-010).

Chairman DiGiulian called the applicant to the podium and asked if the affidavits before the Board of Zoning Appeals (BZA) were complete and accurate. Joseph L. Palmateer, 5701 Clermont Drive, Alexandria, Virginia, replied that it was.

Bill Sherman, 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 four accessory structures to remain. According the Zoning Ordinance, accessory structures must be located a distance equal to their height from the rear lot line and eaves are permitted to extend 3 feet into minimum required yards. Structure #1 was located 7.2 feet from the rear lot line and required a reduction of 1.6 feet; structure #2 was located 3.6 feet from the rear lot line and required a reduction of 7.2 feet; structure #3 was located 3.6 feet with eave 2.8 feet from the rear lot line and required reductions of 6.0 and 4.2 feet; structure #4 was located 1.4 feet with eave 0.3 feet from the rear lot line and required reductions of 11.5 and 9.6 feet; and structure #4 was also located 1.9 feet from the side lot line and required a reduction of 10.1 feet.

The applicant also requested variances to permit accessory structures to cover 59% of the minimum required rear yard. Under the Zoning Ordinance, accessory structures are only allowed to cover 30% of the required minimum rear yard. A variance was also requested to permit an accessory storage structure of 451 square feet and an accessory storage structure of 224 square feet. Under the Zoning Ordinance, accessory storage structures a maximum of 200 feet are permitted. A variance was also requested to allow outdoor storage greater than 100 square feet. Mr. Sherman noted that Roy Biedler, Zoning Inspector, was present to answer questions.

Ms. Gibb asked how the error was discovered. Mr. Sherman replied it was a complaint.

Mr. Palmateer presented the requests as outlined in the statement of justification submitted with the application. He said the metal building was for a 2-car garage. Mr. Palmateer stated that both he and his

~ ~ ~ June 17, 2003, JOSEPH L. PALMATEER, SP 2003-LE-010 and VC 2003-LE-056, continued from Page 545

wife were disabled and the garage provided shelter from the inclement weather. He said the other garage housed a large model train set. He said the other building was for storage of pool furniture.

Ms. Gibb asked if the outdoor storage was wood. Mr. Palmateer replied yes.

Ms. Gibb asked what the nature of the complaint was. Mr. Biedler replied that the complaint was about the structures that had been placed on the property over the years.

Mr. Hart asked if building permits would be required. Mr. Sherman replied yes.

Mr. Hart asked if the outdoor storage could be moved. Mr. Palmateer replied yes.

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

Mr. Hart moved to approve SP 2003-LE-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

JOSEPH L. PALMATEER, SP 2003-LE-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 accessory structures to remain 7.2 ft. from rear lot line, 3.6 ft. with eave 2.8 ft. from rear lot line, 1.4 ft. with eave 0.3 ft. from rear lot line and 1.9 ft. from side lot line. Located at 5701 Clermont Dr. on approx. 32,985 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((5)) 1. (Concurrent with VC 2003-LE-056). 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 17, 2003; 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.

~ ~ ~ June 17, 2003, JOSEPH L. PALMATEER, SP 2003-LE-010 and VC 2003-LE-056, continued from Page 546

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 structures labeled car port, garage, metal shed and frame shed, as shown on the plat prepared by George M. O'Quinn, dated November 13, 2002, and revised through March 3, 2003, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained for the one story frame garage if determined feasible by the Department of Public Works and Environmental Services (DPWES).

This approval, contingent upon the above-mentioned 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 5-2. Mr. Hammack and 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 25, 2003. 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 2003-LE-056 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

JOSEPH L. PALMATEER, VC 2003-LE-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to cover more than thirty (30) percent of the minimum required rear yard and to permit two accessory storage structures greater than 200 sq. ft. and outdoor storage greater than 100 sq. ft.

Located at 5701 Clermont Dr. on approx. 32,985 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((5))

1. (Concurrent with SP 2003-LE-010). 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 17, 2003; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant presented the testimony indicating compliance with the required standards for a variance.

~~~ June 17, 2003, JOSEPH L. PALMATEER, SP 2003-LE-010 and VC 2003-LE-056, continued from Page 547

3. Because of the 75-foot buffer in the rear, the large trees and the fence, the primary impact of the structures is minimal.
4. The closest homes in the direction of the structures is quite a distance away.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 structures and open storage as shown on the plat prepared by George M. O'Quinn, dated November 13, 2002, and revised through March 3, 2003, submitted with this application and is not transferable to other land.
2. Other than the one story frame garage, the remaining structures located in the minimum required rear yard shall not be expanded and shall not be replaced if removed.
3. The outdoor storage area shall be shifted forward of the minimum required rear yard.

This approval, contingent upon the above-mentioned 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 5-2. Mr. Hammack and 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 25,

~ ~ ~ June 17, 2003, JOSEPH L. PALMATEER, SP 2003-LE-010 and VC 2003-LE-056, continued from Page 548

2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 17, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      DAVID RADULOVIC, SP 2003-MV-009 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location for accessory structure to remain 10.5 ft. from side lot line. Located at 7306 Burtonwood Dr. on approx. 17,302 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((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. David Radulovic, 7306 Burtonwood Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior 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 allow an accessory structure to remain 10.5 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 1.5 feet was requested.

Mr. Radulovic presented the request as outlined in the statement of justification submitted with the application. He said he built the swing set an equal distance from the house and the fence. He said he was not aware of distance requirements. Mr. Radulovic said the swing set was large and difficult to move. He said he enclosed the rear yard with a fence in compliance with the County Code.

Mr. Pammel asked with what material was the structure built. Mr. Radulovic replied that it was built with pressure treated wood and stated that 12 other houses in the neighborhood had the same swing set.

Mr. Pammel expressed concern with the arsenic component found in pressure treated wood.

Ms. Gibb asked if the fence was in compliance. Susan Langdon, Chief, Special Permit and Variance Branch, replied yes.

Chairman DiGiulian called for speakers.

Martin Fulcher, 1212 Larone Court, came forward to speak in opposition. He expressed concerns relating to the location and size of the play set. He said the fence was on the property line and there was no area to plant shrubbery. Mr. Fulcher said the play set was detrimental to the use and enjoyment of his property.

Mr. Radulovic presented photographs of the structure. He said there were 35 signatures in support of the application. He said Mr. Fulcher did not live in the home. Mr. Radulovic said he received homeowner association approval for the structure and the fence.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2003-MV-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

DAVID RADULOVIC, SP 2003-MV-009 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location for accessory structure to remain 10.5 ft. from side lot line. Located at 7306 Burtonwood Dr. on approx. 17,302 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((8)) 193. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ June 17, 2003, DAVID RADULOVIC, SP 2003-MV-009, continued from Page 549

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 2003; 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 children's play structure, as shown on the plat prepared by Sam Whitson, dated December 24, 2002, as revised through January 2, 2003, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 25, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 17, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      ROBERT & MILDRED SCHREIBER, TRUSTEES, VC 2003-MA-052 Appl. under Sect(s). 18-

~ ~ ~ June 17, 2003, ROBERT & MILDRED SCHREIBER, TRUSTEES, VC 2003-MA-052, continued from Page 550

401 of the Zoning Ordinance to permit construction of addition 25.7 ft. and eave 24.6 ft. from front lot line. Located at 3410 Mansfield Rd. on approx. 33,900 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 996A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dan Smith, 5814 First Landing Way, Burke, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 25.7 feet and an eave 24.6 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 35 feet and permits eaves to extend 3.0 feet into the minimum yard; therefore, variances of 9.3 feet for the structure and 7.4 feet for the eave were requested.

Mr. Smith, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He submitted packets of information to the Board containing letters of support and elevations of the property in question. He stated that the lot contained irregularly steep topography toward the rear of the home, was affected by multiple County easements, contained minimal side property and was sited toward the front of the property. Mr. Smith said the applicants needed to set up the proposed garage to be handicap accessible.

Robert Schreiber explained that he and his wife were in their mid 70's and wanted to renovate the main floor of the home to be handicap accessible as his wife was ailing. He said the proposed garage needed to be on the side of the home to accommodate a van with a wheelchair lift. He said the proposed garage would be located 38 feet from the paved road and 50 feet from the nearest neighbor's carport and 70 feet from the nearest house. He said many of the neighbors were in support of the application and he had tried to clear up some objections by others. He stated that several letters had been submitted that had inaccurate information.

Chairman DiGiulian called for speakers.

Betty Carpenter, 3412 Mansfield Road, came forward to speak in opposition. She said the proposed garage would obstruct the view from her property and would not be in character with the neighborhood.

William Ireland, 3408 Mansfield Road, came forward to speak in opposition. He said the proposed garage would add 50% to the length of the house and would not be in character with the neighborhood. He stated that he was concerned that a retaining wall would need to be installed along a drainage ditch that extended down the side of the property in question.

Lois Murphy, 3413 Mansfield Road, speaking for Carol Hoes, came forward to speak in opposition. She stated that her mother was in support the opposing viewpoint of the neighbors.

Nancy Block, 3434 Mansfield Road, came forward to speak in opposition. She restated her letter of opposition.

Mr. Schreiber, in his rebuttal, stated that only the front 9.3 feet of the garage would extend beyond the set back line. He said there was dense foliage on either side of the property that would camouflage the proposed garage. He submitted a drainage plan illustrating that there were no drainage issues on the property and the proposed garage would not cause any future drainage issues. He stated that he had tried to speak with several neighbors regarding the proposed garage and got no response.

Mr. Hart asked the applicant if a retaining wall would be associated with the driveway. Mr. Schreiber explained that a retaining wall was proposed to the left side of the home and he was not sure of the height.

Mr. Hart asked staff if a variance would be needed for a retaining wall. Ms. Langdon explained that a variance was not needed for a retaining wall but a building permit needed to be obtained if the retaining wall was over a certain height.

~ ~ ~ June 17, 2003, ROBERT & MILDRED SCHREIBER, TRUSTEES, VC 2003-MA-052, continued from Page 551

Ms. Gibb asked the applicant what the proposed retaining wall was made of. Mr. Smith replied it would consist of concrete block and stone. Ms. Gibb asked the applicant if there was a homeowners association for the neighborhood and what their finding was regarding the request. Mr. Schreiber explained that he had submitted the application to the architectural review committee and they were waiting to hear the outcome of the Board hearing before making a determination.

Chairman DiGiulian closed the public hearing.

Ms. Gibb stated that she wanted to visit the site before making a decision.

Ms. Gibb moved to defer VC 2003-MA-052 to June 24, 2003. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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~ ~ ~ June 17, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. ROBINETTE, VC 2002-HM-188 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 20.30 ft. and permit dwelling 17.3 ft. from front lot line. Located at 1847 Hunter Mill Rd. on approx. 2.01 ac. of land zoned R-1. Hunter Mill District. Tax Map 27-2 ((1)) 5. (def. from 2/11/03) (cont'd from 2/25/03)(moved from 4/8/03) (def from 4/22/03 for dec. only).

Susan Langdon, Chief, Special Permit and Variance Branch, explained that staff submitted a memorandum that included revised development conditions that were discussed at a meeting that the applicants had with the surrounding neighborhood. She said the agent had some changes to the conditions.

Ken Sanders, agent for applicants, explained that the applicants had met with the neighbors and changes were made to the revised development conditions.

There was conversation between Mr. Sanders, the Board and staff as to the revised development conditions. Several typographical changes in the development conditions were corrected and all parties agreed on the proposed changes.

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

Mr. Pammel moved to approve VC 2002-HM-188 with the revised development conditions and 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. ROBINETTE, VC 2002-HM-188 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 20.30 ft. and permit dwelling 17.3 ft. from front lot line. Located at 1847 Hunter Mill Rd. on approx. 2.01 ac. of land zoned R-1. Hunter Mill District. Tax Map 27-2 ((1)) 5. (def. from 2/11/03) (cont'd from /25/03)(moved from 4/8/03) (def from 4/22/03 for dec. 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 June 17, 2003; and

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



~ ~ ~ June 17, 2003, JAMES M. ROBINETTE, VC 2002-HM-188, continued from Page 552

1. The applicant is the owner of the land.
2. The application has been through extensive review.
3. The request is consistent in character with the surrounding development.
4. The issues regarding drainage and the sanitary sewer easement have been addressed.
5. The lot has an unusual configuration.
6. There are unusual circumstances associated with the property. The lot was a residue and was not included in the original development of the area and that explains the irregular 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 a minimum lot width of 20.30 feet for Lot 2, as shown on the plat prepared by Charles J. Huntley, dated September 10, 2002, as revised through June 11, 2003. 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 approval of an overlot grading plan for proposed Lot 2, a tree preservation plan showing final limits of clearing and grading shall be submitted to, reviewed by, and approved by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES) in accordance with the requirements of the Public Facilities Manual. The tree preservation plan shall depict preservation of as much of the existing tree canopy as possible as determined by the Urban Forester in accordance with the requirements of the Public Facilities Manual. This condition shall also apply to proposed Lot 1 if the existing dwelling is moved or replaced.

3. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements on proposed Lot 2 shall be submitted to the Department of Public Works and Environmental Services (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 in accordance with the requirements of the Public Facilities Manual. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forestry Division, a pre-construction conference shall be held on site between DPWES and representatives of the applicant to include the construction site superintendent responsible for 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. All 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. This condition shall also apply to proposed Lot 1 if the existing dwelling is moved or replaced. Additional trees shall be planted along the periphery of Proposed Lot 2 to supplement, and if necessary, replace existing tree cover. Existing tree cover shall only be removed if deemed necessary by the Urban Forestry Division. The species and location of the tree plantings shall be determined in consultation with the Urban Forestry Division as reasonably determined by same; all tree plantings shall have a minimum height of six (6) feet.
4. The southern entrance to the gravel driveway currently located in front of the existing dwelling on proposed Lot 1 shall be removed. Only one entrance to Hunter Mill Road shall be established with this variance.
5. The dwelling located on proposed Lot 1 may be moved or replaced, subject to the conditions above and the minimum yard requirements for the R-1 District.
6. Any new dwelling on Lot 2 shall be constructed within the "proposed house templet" depicted on the plat, shall have no more than two stories above ground and shall contain no more than 5,000 square feet of living space, exclusive of the basement and garage(s).
7. Should a new dwelling be constructed on proposed Lot 2, the applicant shall as approved by DPWES in accordance with the PFM, at the applicant's expense, perform work necessary to correct or alleviate water ponding around the existing storm drainage inlet on the adjacent Lot 94. This work may involve the enlargement of the existing inlet, or the construction of an additional inlet on proposed Lot 2. If the work involves constructing an additional inlet on Proposed Lot 2, the inlet shall be constructed in such a manner as to provide an opportunity to plant trees along the periphery of Proposed Lot 2. The work to deal with water ponding around the existing storm drainage inlet shall be completed prior to issuance of a Building Permit for a new dwelling to be located on Proposed Lot 2. This requirement is subject to the provision that the applicant is provided at no cost such storm drainage easements on Lot 94 as may be required for such work. The applicant shall be responsible for paying any legal fees associated with obtaining the storm drainage easements or permissions.
8. 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 among the property owners of Lots 1 and 2 and shall be recorded in the land records of Fairfax County. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.
9. The location of the existing driveway shall not be moved any further to the north along the property's northern lot line adjacent to Lot 8 upon development of Proposed Lot 2.
10. Subsequent to preparation of an overlot grading plan, but prior to submission of the plan for Proposed Lot 2, the applicant shall notify adjacent parcel owners for the purpose of permitting them to view the proposed building footprint and the proposed engineering techniques to prevent stormwater from leaving the site and entering adjacent lots.

Pursuant 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

~ ~ ~ June 17, 2003, JAMES M. ROBINETTE, VC 2002-HM-188, continued from Page 554

if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 June 25, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 17, 2003, (Tape 1), Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, B and C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03)

Chairman DiGiulian stated the Board previously approved an intent to defer A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 to July 15, 2003.

Mr. Pammel moved to defer A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 to July 15, 2003, 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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~ ~ ~ June 17, 2003, (Tape 1), After Agenda Item:

Approval of September 10, 2002 Minutes

Mr. Pammel moved to approve the Minutes. 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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~ ~ ~ June 17, 2003, (Tape 1), After Agenda Item:

Approval of June 10, 2003 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.

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As there was no other business to come before the Board, the meeting was adjourned at 11:46 a.m.

Minutes by: Regina Thorn Corbett / Lori M. Mallam

Approved on: October 12, 2004

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 24, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; James Hart; Paul Hammack; Robert Kelley; and, John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Mr. Ribble announced the retirement of Robert Kelley from the Board of Zoning Appeals (BZA). He recognized Mr. Kelley for his service on the BZA for 15 years and that his valued input was appreciated and would be missed. Mr. Ribble noted that Mr. Kelley and his wife were retiring to Florida and on behalf of his fellow Board members, wished them well.

There were no further Board Matters to bring before the Board; therefore, Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals, and then called for the first scheduled case.

~ ~ ~ June 24, 2003, (Tape 1), Scheduled case of:

9:00 A.M. CYNTHIA J. & TIMOTHY M. HOHNER, VCA 73-P-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 73-P-057 to permit construction of accessory structure 2.1 ft. from side lot line and 2.6 ft. from rear lot line and roofed deck to remain 27.6 ft. from front lot line. Located at 2939 Rosemary La. on approx. 7,500 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((7)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cynthia Hohner, 2939 Rosemary Lane, City, State replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure, specifically a detached garage, 2.1 feet from the side lot line and 2.6 feet from the rear lot line, The Ordinance requires a minimum side yard of 10.0 feet, and a rear yard equal to the height of the proposed accessory structure which is 10.5 feet; therefore, variances of 7.9 feet and 7.9 feet were requested for the addition. The applicant also requested approval to permit a roofed deck, or a covered front stoop, to remain 27.6 feet from the front lot line. The Ordinance requires a minimum front yard of 30 feet; therefore, a variance of 2.4 feet was requested for the roofed deck.

Ms. Hohner presented the variance request as outlined in the statement of justification submitted with the application. She explained that their narrow lot restricted the placement of a detached garage. She noted that current setback requirements mandated the garage be placed directly in the center of their rear yard which effectively eliminated use of their back yard and required removing several mature hardwood trees. Ms. Hohner pointed out that a 6-foot privacy fence screened the proposed garage, except the roofline, from the neighbors and that a sturdy garage provided security for their property and maintained neighborhood property values. She responded to questions from Mr. Hammack concerning moving the garage.

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

Mr. Hammack moved to approve in-part VCA 73-P-057 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CYNTHIA J. & TIMOTHY M. HOHNER, VCA 73-P-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 73-P-057 to permit construction of accessory structure 2.1 ft. from side lot line and 2.6 ft. from rear lot line (**THE BZA APPROVED 4.0 FEET FROM SIDE AND REAR LOT LINES**) and roofed deck to remain 27.6 ft. from front lot line. Located at 2939 Rosemary La. on approx. 7,500 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((7)) 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 24, 2003; and

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

1. The applicants are the owners of the land.
2. The garage is 24 feet deep and 20 feet wide placing it too close to the side and rear lot lines. To allow for adequate maintenance, the garage must be placed no closer than 4 feet to both the side and the rear lot lines.
3. The yard is particularly narrow, but it is the same size as lots in the immediate vicinity.

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

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

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

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

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

1. This variance is approved for the accessory structure (**THE BZA APPROVED 4.0 FEET FROM SIDE AND REAR LOT LINES**) and roofed deck shown on the plat prepared by Richard J. Cronin of Dewberry & Davis LLC, dated February 10, 2003 and 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

~ ~ ~ June 24, 2003, CYNTHIA J. & TIMOTHY M. HOHNER, VCA 73-P-057, continued from Page 558

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 July 2, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 24, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN E. AND GLENDA J. MIESNER, VC 2003-SU-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line such that side yards total 15.75 ft. Located at 12497 Alexander Cornell Dr. on approx. 8,769 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 45-2 ((6)) 80.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Miesner, 12497 Alexander Cornell Drive, Fairfax, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the staff report. The applicant requested a variance to permit construction of an addition 7.0 feet from the side lot line such that the side yards total 15.75 feet. The Ordinance requires a minimum side yard of 8.0 feet, with total side yards of 20.0 feet; therefore, variances of 1.0 feet and 4.25 feet were requested.

Mr. Miesner presented the variance request as outlined in the statement of justification submitted with the application. He stated that the need for the addition was due to his growing family. He said he enjoyed the neighborhood and would not want to move. He explained the variance measurements and proximity to his neighbor. He noted that his neighbor supported the variance. Mr. Miesner submitted that the uniqueness of his situation with the narrowness and pie-shape of his lot warranted the variance. He pointed out that he enjoyed the support of his next door neighbor, and that the requested variance did not alter the neighborhood's character. Mr. Miesner requested the Board's approval.

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

Mr. Hart moved to approve VC 2993-SU-066 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN E. AND GLENDA J. MIESNER, VC 2003-SU-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line such that side yards total 15.75 ft. Located at 12497 Alexander Cornell Dr. on approx. 8,769 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 45-2 ((6)) 80. 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 24, 2003; and

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

1. The applicants are the owners of the land.
2. The lot is small and has an odd shape which restricts where an addition can be placed.

3. The proposed addition will be placed at the most logical place requiring a minimal variance.
4. The addition has no negative impact on the neighbors.
5. The addition is adjacent to homeowners open space.
6. The variance will have a lessened impact because the lot widens towards the street.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 John E. Miesner, dated April 16, 2003, as revised through April 17, 2003 and 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.



~ ~ ~ June 24, 2003, JOHN E. AND GLENDA J. MIESNER, VC 2003-SU-066, continued from Page 560

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 2, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 24, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE E. ANDERSON, VC 2003-LE-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line and 17.2 ft. from front lot line. Located at 2918 Breezy Terr. on approx. 12,317 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3 ((4)) 19.

Chairman DiGiulian announced the applicant, Lawrence E. Anderson, had requested a 90-day deferral of his public hearing because he had not received a copy of a letter, which included a petition, that opposed his variance. Chairman DiGiulian asked if there was anyone in the audience who wished to speak on the issue of deferral.

Donovan Upchurch, 2916 Breezy Terrace, Alexandria, the Anderson's next door neighbor, submitted a petition signed by the surrounding neighbors, which strongly opposed the variance.

Chairman DiGiulian instructed Mr. Upchurch to direct his comments toward the question of deferral and not the merit of the variance requested by Mr. Anderson. Chairman DiGiulian pointed out that the Board had the purview to grant one deferral.

Mr. Upchurch said Mr. Anderson had sufficient time to have prepared and submitted his application to the Board and believed that the 90-day deferral be denied and that the public hearing should be heard as scheduled.

Mr. Hammack commented that a 30-day deferral should be sufficient and so moved.

Susan Langdon, Chief, Special Permit and Variance Branch, suggested July 22, 2003, at 9:00 a.m. to reschedule the Anderson application.

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

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~ ~ ~ June 24, 2003, (Tape 1), Scheduled case of:

9:00 A.M. DENVER S. RHODES, SP 2003-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 addition to remain 5.2 ft. from side lot line. Located at 3110 Hall Ct. on approx. 8,478 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 347. (Concurrent with VC 2003-MA-060).

9:00 A.M. DENVER S. RHODES AND NEVALEE RHODES, VC 2003-MA-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from side and rear lot lines. Located at 3110 Hall Ct. on approx. 8,478 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 347. (Concurrent with SP 2003-MA-011).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Denver S. Rhodes, 3110 Hall Court, Falls Church, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit the construction of a detached garage 2.0 feet from the rear lot line and 2.0 feet from the side lot line of a corner lot. The Zoning Ordinance requires a minimum side yard of 10 feet in the R-4 District, and a rear yard on a corner lot may take side yard setbacks; therefore, variances of 8 feet were requested from each lot line. The applicant also requested a reduction to the minimum yard requirements based on error in building location to permit a storage shed to remain 5.2 feet from the side lot line. The

~ ~ ~ June 24, 2003, DENVER S. RHODES, SP 2003-MA-011, and DENVER S. RHODES AND NEVALEE RHODES, VC 2003-MA-060, continued from Page 561

minimum required side yard in the R-4 zoning district is 10 feet; therefore, a modification of 4.8 feet was requested.

Mr. Rhodes said he resided on the property for a year with the shed being constructed by the previous owner.

He noted that he had cleaned it up and installed shelves for storage purposes. He explained that the necessity for the requested 8-foot variance was to construct a detached garage. Mr. Rhodes pointed out that his lot was narrow and adherence to the setback requirements would restrict all reasonable use of his back yard. Responding to Mr. Hammack's suggestion, he agreed to reduce his variance to allow for maintenance between the structure and his fence, but pointed out how that would greatly reduce useable back yard space.

Mr. Hammack explained the Board's mandates for granting variances.

Mr. Rhodes submitted that he wanted to store his classic car which currently he was paying to garage.

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

Mr. Ribble moved to approve SP 2003-MA-011 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

DENVER S. RHODES, SP 2003-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 addition to remain 5.2 ft. from side lot line. Located at 3110 Hall Ct. on approx. 8,478 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 347. (Concurrent with VC 2003-MA-060). 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 24, 2003; 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.

~ ~ ~ June 24, 2003, DENVER S. RHODES, SP 2003-MA-011, and DENVER S. RHODES AND NEVALEE RHODES, VC 2003-MA-060, continued from Page 562

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development condition:

1. This Special Permit is approved for the location of the addition shown on the plat prepared by William G. Hawes, dated December 6, 2002, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned 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. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 2, 2003. This date shall be deemed to be the final approval date of this special permit.

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Concurring with Mr. Hammack's opinion that 4 feet was close for the proposed garage to be from the side lot line, Mr. Ribble moved to approve in-part VC 2003-MA-060 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DENVER S. RHODES AND NEVALEE RHODES, VC 2003-MA-060 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from side and rear lot lines. **(THE BZA APPROVED 4.0 FEET FROM THE SIDE AND REAR LOT LINES)** Located at 3110 Hall Ct. on approx. 8,478 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 347. Concurrent with SP 2003-MA-011). 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 24, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The garage will be placed no closer than 4 feet from the lot lines.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;

~ ~ ~ June 24, 2003, DENVER S. RHODES, SP 2003-MA-011, and DENVER S. RHODES AND NEVALEE RHODES, VC 2003-MA-060, continued from Page 563

- B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 a garage on the plat (**THE BZA APPROVED THE GARAGE 4.0 FEET FROM THE SIDE AND REAR LOT LINES**) prepared by William G. Hawes, dated December 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.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 2, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ June 24, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MOHAMMED & BENAZIR FEROZI, SP 2003-LE-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 addition to remain 9.0 ft. from side lot line and to permit accessory structure to remain 10.5 ft. from side lot line and 9.0 ft. from rear lot line. Located at 6825

~ ~ ~ June 24, 2003, MOHAMMED & BENAZIR FEROZI, SP 2003-LE-022, continued from Page 564

Ridgeway Dr. on approx. 21,781 sq. ft. of land zoned R-1. Lee District. Tax Map 90-1 ((7)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor David Hunter, P.O. Box 2344, Woodbridge, Virginia, replied that it was.

William Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on error in building location to permit a garage to remain 9.0 ft from the side lot line. The minimum required side yard in the R-1 zoning district is 20 feet; therefore, a modification of 11.0 feet was requested. The applicant also requested a reduction to the minimum yard requirements to permit a shed of 11.5 feet in height to remain 10.5 feet from the side lot line and 9.0 feet from the rear lot line. The minimum required rear yard for accessory structures is equal to the height of the structure, therefore reductions of 9.5 and 2.5 feet were requested.

Mr. Sherman responded to Ms. Gibb's question concerning the addition and a specific building permit. He clarified Ordinance language for an addition versus an accessory structure in response to Mr. Hart's question.

Responding to Mr. Hart's query, Susan Langdon, Branch Chief, Special Permit and Variance Branch, further clarified Ordinance language concerning an accessory dwelling structure.

Pastor Hunter presented the request as outlined in the statement of justification submitted with the application. He explained that the applicant requested to permit his garage, an accessory structure, to remain. Pastor Hunter noted that the previous year, the garage was rebuilt, in the same location, without realizing it required a special permit to allow an error in building location. He explained that the original architect was replaced and that the architectural drawings for the substantially sized addition required a second building permit for submission. He clarified the Stop Work Order issued by the County was for a side-yard setback violation for the reconstructed garage. Pastor Hunter noted that the addition met the Ordinance requirements for an addition to the principal structure.

Questions followed by the Board members, Ms. Gibb, Chairman DiGiulian, Messieurs Hart, Hammack and Kelly concerning the garage's size and location, the architectural renderings, the setbacks, and the permits involved.

Mr. Hart said the drawings were confusing and it was difficult to determine what sketch coincided with what permit as well as the improvement that was requested versus what already existed.

Mr. Ribble requested that either the architect or the contractor address the Board's questions.

As neither the architect nor contractor was present, Mr. Kelley stated that the application had too many unanswered questions and, therefore, he was not in a position to make a recommendation other than denial.

Chairman DiGiulian called the applicant to the podium.

Mrs. Benazir Ferozi, 6825 Ridgeway Drive, gave a history of the original architect's actions, the permits attained from the County, and the considerable cost expended to date. She explained her experience when she sought a County permit for the addition, pointing out that she stopped construction after design and setback problems became evident. She appealed to the Board to permit it to remain.

In response to Mr. Hammack's query, Ms. Langdon stated that the plat presently before the Board was what the applicant requested, and if approved by the Board, a permit would be necessary.

Mrs. Ferozi responded to Mr. Hart's questions concerning their length of residence, ownership of the property in 1990, the existing garage and carport and when each was demolished, and particulars of their previous permits submitted to the County.

Commenting that deferral was recommended, Chairman DiGiulian called for speakers.

Ms. Daralynne Hanley, 7309 Oriole Avenue, Springfield, Virginia, representing the Springvale Civic Association, urged that the County mandate adherence to the zoning regulations to assure harmony in neighborhoods. She pointed out that the expansive size of the Ferozi's lot afforded a more appropriate

~ ~ ~ June 24, 2003, MOHAMMED & BENAZIR FEROZI, SP 2003-LE-022, continued from Page 565

location for the garage without encroaching into adjoining property lines. She requested that the Board uphold the County Ordinances and deny the special permit. Responding to Ms. Gibb's question, Ms. Hanley said it seemed the reconstructed garage appeared larger and closer to the property line than the original one. There was no problem with the existing shed, she added.

In response to Mr. Hart, Ms. Langdon said staff depended on the surveyor of the plat to assure the drawing and dimensions corresponded to the proposed construction.

Ms. Carla Petliner, 7220 Wesley Road, stated that she was familiar with the permit process from personal experience, and was skeptical that the Ferozis were completely unaware that the rebuilt garage was 20 feet closer to the lot line than its predecessor. She questioned whether the 9-foot error was in good faith.

Pastor Hunter asked for a deferral and for Mr. Crouch, Deputy Zoning Administrator, to be present for the decision as Mr. Crouch worked with the Ferozis through some of the permit processes and could clarify some issues. He noted that the issue was not the 9-foot setback but the original location of the addition and which plat and building permit was correct. He stated that the Ferozis' error was non-conformance with the current building permit and not following up with the architect and contractor.

Mr. Hart requested that before the decision date, staff provide copies of the building permits in chronological order with a brief explanatory note for each.

At the request of Chairman DiGiulian, Pastor Hunter said he would seek out the architect and contractor and request that they appear on the decision date. Mr. Hammack requested copies of the architectural drawings.

Mr. Kelley commented that he preferred to deny the application and allow the applicant to seek recourse through the court system. Mr. Kelley moved to defer for 90 days SP 2003-LE-022, to September 23, 2003, at 9:00 a.m.

The motion was seconded by Mr. Hammack and carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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~ ~ ~ June 24, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT & MILDRED SCHREIBER, TRUSTEES, VC 2003-MA-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.7 ft. and eave 24.6 ft. from front lot line. Located at 3410 Mansfield Rd. on approx. 33,900 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 996A. (Continued from 6-17-03)

Mr. Hammack recused himself because of a personal relationship with one of the parties involved.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Darren Smith, 5814 First Landing Way, Burke, Virginia, agent for the applicant, replied that it was.

Ms. Gibb announced that the application was deferred for decision from the previous week. She said the issue was whether the garage was compatible with the neighborhood. She conceded that the garage front would protrude slightly and that the structure, to include a circular driveway, was substantial. Ms. Gibb believed that there must be less of an impact and suggested that design changes were necessary.

Ms. Gibb moved to deny VC 2003-MA-052 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT & MILDRED SCHREIBER, TRUSTEES, VC 2003-MA-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.7 ft. and eave 24.6 ft. from front lot line. Located at

~ ~ ~ June 24, 2003, ROBERT & MILDRED SCHREIBER, TRUSTEES, VC 2003-MA-052, continued from Page 566

3410 Mansfield Rd. on approx. 33,900 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 996A. 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 24, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The proposed addition and circular driveway are substantial and not compatible with the neighborhood.
3. A revised design can reduce the 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 4-0. Ms. Gibb moved to waive the one-year wait period for refileing a new application. Mr. Hart seconded the motion, which carried by a 4-0 vote. Mr. Hammack and Mr. Ribble were not present for the votes. 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 July 2, 2003.

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~ ~ ~ June 24, 2003, (Tape 2), Scheduled case of:

9:00 A.M. CURTIS N. SYMONDS, SP 2003-SU-012 Appl. under Sect(s). 5-303 of the Zoning Ordinance to permit commercial athletic courts. Located at 3801 Glorus Rd. and 3730 Stonecroft Blvd. on approx. 4.10 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-2 ((2)) 13C and 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. Keith Martin, Esquire, Walsh, Colucci, et al., agent for the applicant, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented staff's position. She stated that the application was to permit a Group 5 special permit use to establish an indoor commercial athletic courts facility to be used primarily for basketball and volleyball. Staff recommended approval subject to the Proposed Development Conditions contained in the staff report.

Mr. Martin presented the request as outlined in the statement of justification submitted with the application. He gave a brief history of Mr. Symond's love of basketball and the merits of an athletic court facility for the needs of Fairfax County citizens. He requested that Development Condition #5 be amended to increase the hours of operation on Mondays through Fridays.

Chairman DiGiulian called for speakers.

Michael Spragg, 13751 Lowe Street, an adjoining parcel owner, stated he had no objection to the facility but was concerned about road improvements and access to the facility. He requested that road improvements be performed now and funded by released escrow funds.

Mr. Martin said there were reasons for performing overall road improvements and not constructing curb and gutter for limited distances on one side of the street and these reasons were the same for the escrowing of funds for future development of surrounding properties.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2003-SU-012 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CURTIS N. SYMONDS, SP 2003-SU-012 Appl. under Sect(s). 5-303 of the Zoning Ordinance to permit commercial athletic courts. Located at 3801 Glorus Rd. and 3730 Stonecroft Blvd. on approx. 4.10 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-2 ((2)) 13C and 14. 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 24, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. The facility will be beneficial to the community providing recreational opportunities for youth and adult activities.
4. The design is attractive with its stucco and architectural block, and complements the nearby recreational center and high school facility.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:



~ ~ ~ June 24, 2003, CURTIS N. SYMONDS, SP 2003-SU-012, continued from Page 568

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-303 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, 3801 Glorus Road and 3730 Stonecroft Boulevard and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Patton, Harris, Rust and Associates, P.C., dated April 6, 2003, as revised through May 20, 2003, 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 hours of operation for the commercial athletic courts shall be limited a maximum of 7:00 a.m. to 11:00 p.m. Monday through Saturday, and 9:00 a.m. to 9:00 p.m. Sunday.
6. All parking shall be on-site as shown on the Special Permit plat. If the proposed future entrance is constructed on Stonecroft Boulevard, a Special Permit Amendment will not be required, provided the minimum number of parking spaces required by the Zoning Ordinance is provided.
7. A maximum of 400 patrons may be in the facility at any one time.
8. The athletic courts will be scheduled to allow all participants and spectators in a scheduled session to vacate the facility prior to the commencement of the following session.
9. The building shall be constructed in substantial conformance with the design depicted on Attachment A, building elevation, and shall be constructed with architectural block and stucco-type finish siding.
10. Any proposed lighting shall be provided in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed eighteen (18) feet.
  - The lights shall be low intensity design, full-cut-off fixtures, which focus the light directly onto the subject property. Shields shall be installed, if necessary.
  - 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(s).
  - There shall be no plighting of the existing or proposed buildings.
11. Any proposed signs shall comply with Article 12 of the Zoning Ordinance, notwithstanding, however, there shall be no plighting of any signs.
12. Prior to any land disturbing activity, both a grading plan and a tree preservation plan which establishes the limits of clearing and grading necessary to construct the improvements and preserves the maximum vegetation around the rear and sides of the proposed structure shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Urban Forestry

Division, for review and approval. Prior to any land disturbing activities for construction, if deemed necessary by the Urban Forestry Division, a pre-construction conference shall be held on site between DPWES and representatives of the applicant to include the construction site superintendent responsible for 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. All 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.

13. Understory and foundation plantings, in addition to the plantings shown on the Special Permit plat to soften the appearance of the parking area and structure, shall be provided adjacent to Stonecroft Boulevard and surrounding the proposed building. The species, size, number and location shall be determined in consultation with the Urban Forestry Division of DPWES.
14. Notwithstanding that which is shown on the plat, pavement widening with curb and gutter on Stonecroft Boulevard, shall be constructed by the applicant at 35 feet from centerline, or a construction escrow shall be provided in lieu of construction as determined by DPWES. Improvements shall be constructed as shown on the special permit plat to Murdock Road. The applicant shall provide an escrow for half of the cost of construction for the remainder of Murdock Road, or at the applicant's option, the applicant may construct improvements on half of the site's remaining frontage on Murdock Road.
15. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as determined by the Department of Public Works and Environmental Management (DPWES). If DPWES determines that the SWM/BMP requirements cannot be provided downstream as proposed, they shall be provided on-site as determined by DPWES, however no additional parking spaces shall be deleted except as noted in Condition 6.

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 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. Pammel was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 2, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ June 24, 2003, (Tape 2), 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, increase in seats, building additions and site modifications. Located at 6426 Ox Rd. and 6401 Wolf Run Shoals Rd. on approx. 21.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((1)) 35, 36 and 36B. (Admin Moved from 12/17/02 1/28/03, 2/18/03 and 3/11/03 per appl. Req.) (def from 5/6/03 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. Stephen K. Fox, Esquire, Stephen K. Fox, PC, agent for the

~ ~ ~ June 24, 2003, TRUSTEES OF SEOUL PRESBYTERIAN CHURCH, SPA 95-S-029, continued from Page 570

applicant, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant requested approval of a special permit amendment to permit additional land, an increase in sanctuary seating, building additions and site modifications. The development was proposed in two Phases, she said, with Phase I to increase the total gross floor area from 14, 845 square feet to 28,845 square feet, and parking increased from 83 spaces to 168 spaces. Phase II, Ms. Stanfield noted, would increase the total gross floor area from 28,845 square feet to 51,345 square feet; the parking would increase from 168 spaces to 333 spaces, and the sanctuary seating would increase to 1,000 seats. Staff recommended denial of the application, stated Ms. Stanfield, as it was not in harmony with the Comprehensive Plan and not in conformance with the applicable Zoning Ordinance provisions. Ms. Stanfield pointed out that there were numerous unresolved environmental issues concerning encroachment into the EQC (environmental Quality Corridor) from both the proposed parking lot expansion and the construction of a force main and a pumping device. Ms. Stanfield also pointed out that staff was unable to determine if the intensity of the development would be in conformance with the surrounding low density residential development because the applicant had not provided critical information after repeated requests from staff.

Mr. Fox thanked Mr. Kelley for his years of service on the Board. He then proceeded with his presentation, explaining that the church was an on-going work in process and as the congregation grew there became a need for additional facilities to accommodate activities and services. He submitted that the applicant was responsive and diligent in addressing each and every issue staff raised. He addressed the EQC issues, stormwater drainage, parking provisions, and wetland encroachment. He believed the church more than adequately answered staff's questions concerning the utilization of several buildings after the completion of Phase II. Mr. Fox maintained that the application was commendable and that staff was intractable over minor issues. He requested the BZA's approval and stated he would modify several development conditions as staff directed. Mr. Fox stated specific language amending Conditions 11, 12, and 14.

Ms. Stanfield said staff would agree to a pervious surface for a portion of the principle parking area.

Chairman DiGiulian called for speakers.

Gary Pisner, 6439 Little Ox Road, Fairfax Station, stated that there was no sewer for the church site. He expressed concern over the impervious surfaces destructive runoff into Wolf Run Shoals, and the possibility of exacerbated traffic problems if school functions were held in several of the buildings.

In his rebuttal, Mr. Fox stated that he sent staff a written explanation of the intended uses for the buildings in question. He acknowledged Mr. Pisner's concern about too much impervious surface and, if the decision were deferred, he would review the plans for a remedy, or accept a condition requiring further exploration with the Department of Public Works and Environmental Services (DPWES) at site plan. Mr. Fox assured the Board that there would be no parochial school activity, only religious education in conjunction with the church's mission.

Ms. Langdon responded to Ms. Gibb's question concerning the County's policy for placing sewer lines within close proximity or within an EQC area. She explained staff's position on the applicant's design for their sewer provision and offered several alternatives which would have less of an impact.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he was concerned over the issues staff raised and believed them justified. He said he was particularly concerned with the septic field and EQC area, and the parking situation with the amount of impervious surface. He said the application needed more work and that he was not prepared to approve it as submitted. In order to allow the applicant time to address alternatives, Mr. Hammack moved to defer the decision on SPA 95-S-029, Trustees of Seoul Presbyterian Church until September 30, 2003, at 9:00 a.m.

Ms. Gibb seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

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~ ~ ~ June 24, 2003, (Tape 2), Scheduled case of:

9:30 A.M. PAUL HORMANN ET AL AND DUANE HORMANN ET AL, A 2003-HM-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a commercial use (automotive windshield replacement/repair business and mobile lock repair service) and are allowing commercial vehicles to be parked on property located in the R-1 District in violation of Zoning Ordinance provisions. Located at 12345 Lawyers Rd. on approx. 2.03 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-4 ((1)) 26. (moved from 4/29/03 at appl req.)

Regina Murray, Senior Assistant to the Zoning Administrator, stated that the appeal was of the determination that the appellants had established a business, most similar to a contractor's office and shop, and allowed multiple vehicles to park on the property. She gave a description of the property and the buildings on it. She noted that County site inspections had determined that the garage structure was used to store equipment and supplies for a windshield repair shop and a locksmith, and that there were numerous visits by individuals, arriving in commercial vehicles, who picked up and dropped off materials. She added that the appellants admitted to these visits but had denied performing repair work. Ms. Murray explained that the apparent activities were not permitted in an R-1 District; and therefore, were in violation of the Zoning Ordinance. She noted that the appellants indicated in writing that the cited violations were cleared but refused a follow-up inspection by staff. Ms. Murray requested the BZA to uphold the determination in the Notice of Violation.

Barnes Lawson Jr., Esquire, Lawson & Frank, 6045 Wilson Boulevard, Suite 100, Arlington, agent for the appellants, said the violations were cleared and a letter was sent to staff indicating so. He denied that trade tools or equipment were stored on-site although, he conceded, there were construction vehicles temporarily parked to clean up the property. Mr. Lawson addressed the settlement agreement between the County and the Hormanns (a copy of which is contained in the record). He disagreed with the stipulation mandating that the County could initiate legal action to ensure compliance if they determined there was a violation of the terms of the Agreement. He refuted staff's contention that Mr. Hormann had refused County inspectors access, displaying a picture evidencing a County vehicle parked on the property. Mr. Lawson pointed out that when the Hormanns took ownership of the property, it was in a terrible state with junk and debris dumped everywhere and that Mr. Hormann had improved the property by hauling away the trash left by the previous owner.

Mr. Hammack pointed out that the issue was not of clearing the violation, but whether the Hormanns were conducting a business in November 2002, and December 2002.

Mr. Lawson clarified that the appellants had not admitted being in violation, only that there were several vehicles on the property while doing work. He explained that his routine legal procedure was to file an Appeal immediately, to meet the time limit for filing, whenever there was a Notice of Violation to assure preservation of his client's rights.

Concurring with Mr. Hammack, Mr. Hart stated that the issue before the Board was if the January 2003, letter of violation was correct, and was the violation cleared up within 30 days after it was issued. Mr. Hart said the appellants should allow County inspectors a site visit to conclude the matter.

Mr. Hammack suggested photographs or witnesses could clear up the matter, adding that the Board could not simply take the word of an appellant that a violation was cleared.

Chairman DiGiulian called for speakers.

Richard Grzesiak, 2724 Robaleed Way, Herndon, a neighbor, said since the time he moved in, he noticed the appellant's property undergoing a continual clean-up. He had no problem with the property and it appeared to him that there was no business operating on the site.

Mrs. Hormann, the appellant, clarified that the property was never used to store equipment or materials/supplies. She maintained that the property had only been improved since their ownership.

Ms. Murray, stated staff understood the BZA's decision was based on what occurred during the November - December timeframe. She submitted that since the April agreement discussions, staff had observed several vehicles either delivering or picking up materials from the site, and staff had concerns whether or not the violation continued.

Chairman DiGiulian called upon a citizen who indicated he wanted to give testimony.

~ ~ ~ June 24, 2003, PAUL HORMANN ET AL AND DUANE HORMANN ET AL, A 2003-HM-010, continued from Page 572

John Wise, a next-door neighbor of the Hormanns, said there was a lot of junk left by the previous owner and the Hormanns had done a wonderful job of cleaning up the property. He stated that Mr. Hormann allowed neighborhood children to practice ball in his stockade-enclosed back yard during the sniper incident and he believed Mr. Hormann was a very good neighbor on that basis as well.

Mr. Hormann stated that he believed himself to be persecuted over a pre-existing condition that he had continued to rectify. He pointed out that previous businesses had operated on the property and material remained from those businesses, such as glass for storm doors, of which he had not yet been able to remove. Mr. Hormann believed it was his constitutional right to deny inspections of his vehicle and his property.

Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that the pre-existing condition of Mr. Hormann's property should not warrant the appellants guilty of the violation, but he also believed there was a strong indication there was a business operating on October 29, 2002, and November 13, 2002, albeit, without substantial evidence to prove so. Mr. Hammack said he did not understand why Mr. Hormann would not allow County inspectors access to his property to resolve the matter, but would like to give him the opportunity to reconsider the inspection. Mr. Hammack moved to defer the decision on Appeal A 2003-HM-010, Paul Hormann et al and Duane Hormann et al, to July 8, 2003, at 9:30 a.m. Ms. Gibb seconded the motion.

Mr. Hart clarified that this vote was on the November and December violations and pertaining January 6, 2003, letter. He believed the appellants had not proved the original determination incorrect or that a violation was cleared within 30 days, and a current violation was not germane.

Mr. Kelley disagreed with Mr. Hart's comments.

The motion to defer decision carried by a 6-0 vote; Mr. Pammel was absent from the meeting.

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~ ~ ~ June 24, 2003, (Tape 3), After Agenda Item:

Request for Additional Time, SP 98-P-051  
Thanh Troung, Ananda Buddhist Mediation Institute, Inc.

Susan Langdon, Chief, Special Permit and Variance Branch, requested that the Board allow several of the citizens present to speak.

Richard Young, Esquire, with the firm Pelton, Balland, Young, Demsky, Baskin & O'Malie, 4216 Evergreen Lane, Annandale, agent for the Temple, stated that considerable expense had been expended to comply with the County's special permit requirements, and with only 24 members, the financial burden was severe. He requested the Board grant the additional time.

Mr. Hart noted a significant number of vehicles attending services.

Mr. Young stated that once a month he has a meeting at the temple, but he has never seen a service, however, many individuals seek counsel by going to the house regularly.

John Murphy, 7321 Statecrest Drive, voiced his opposition to granting additional time, stating that the Zoning Ordinance violations continued and that non-compliance of the special use permit limitations were exacerbated. He stated that services were held on-site resulting in considerable traffic. Mr. Murphy believed there were far more church members than 24, as some Sundays there appeared to be as many as 100 attending services.

Bruce Miller, Senior Zoning Inspector, Zoning Enforcement Division, stated that he had observed no worship services during his inspections but noted that the facility was arranged, designed and intended for use as a place of worship. He noted that there was a continued zoning violation because there was no site plan approval, and the institute had not obtained its Non-Residential Use Permit (RUP) nor implemented the

~ ~ ~ June 24, 2003, AFTER AGENDA ITEMS, continued from Page 573

parking design criteria or provided the required plant screening. Mr. Miller pointed out that the facility occupied an area in a flood plain with a use that might not be permitted, and that fill material, exceeding the allowed amount, was placed without an approved grading plan.

Reverend Thanh Troung, Ananda Buddhist Meditation Institute, requested additional time to complete the special permit requirements. He maintained that there were no religious services, only counseling to visiting students or members seeking advice. Mr. Troung stated that the traffic parked along Annandale Road was from other activities not his members. In response to Chairman DiGiulian's question, he acknowledged they had not submitted a site plan to date.

Ms. Langdon clarified that the special permit was approved 2-1/2 year ago, and no site plan had yet been submitted.

Mr. Young informed the Board that Bowman Consultants handled the temple's original application, its variance approval and the resubdivision, but they were reluctant to file for the site plan until the Board made its determination on approving the additional time.

Discussion followed among Ms. Langdon, Mr. Hart and Mr. Young concerning a revocation request during the application's early stages.

Commenting that the applicant did not appear to be complying with the special permit's requirements, Mr. Kelley stated he would not approve a motion to grant additional time.

Chairman DiGiulian concurred with Mr. Kelley's statement.

Discussion followed among Ms. Langdon, Ms. Gibb, Mr. Hammack, Mr. Hart, and Mr. Miller concerning the previously discovered violations occurring on the property and the continuing violations of the development conditions, specifically the fact that the applicant had not constructed the parking area, had not fully implemented all the other site development requirements, nor made application for site plan approval. Mr. Miller stated that the applicant continued to operate a place of worship on the property without an approved Non-Residential Use Permit (NRUP), and pointed out that the applicant had relocated some of its activities to National Memorial Gardens.

Mr. Hammack summed up by stating that the applicant had had three years to submit its site plan with the applicant now requesting approval before the submission, and that was not how the system worked. He stated he was reluctant to grant an extension of time with the knowledge that the temple had been operating in violation and had not obtained the necessary permits.

Mr. Kelley moved to deny the request for additional time for SP 98-P-051, Thanh Troung, Ananda Buddhist Meditation Institute, Inc.

Mr. Hart assumed the Chair. Mr. DiGiulian seconded the motion.

Mr. Hammack said he would consider a minimal extension of time, not the one-year, but the County should complete its investigation of the temple's alleged violations and track the applicant's permit submissions.

The motion to deny additional time carried by a 5-0 vote with Mr. Ribble not present for the vote. Mr. Pammel was absent from the meeting.

Chairman DiGiulian resumed the Chair.

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~ ~ ~ June 24, 2003, (Tape 3), After Agenda Item:

#### Approval of June 17, 2003, Resolutions

Mr. Hammack moved to approve the June 17, 2003 Resolutions, which was seconded by Ms. Gibb, and carried by a 5-0 vote. Mr. Ribble was not present for the vote. Mr. Pammel was absent from the meeting.

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~ ~ ~ June 24, 2003, continued from Page 574

Mr. Hammack thanked Mr. Kelley for his 15 years of trying to better the life of Fairfax County citizens by serving on the Board of Zoning Appeals and wished him all happiness in his retirement to Florida.

Ms. Langdon presented Mr. Kelley with his name plate plaque.

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As there was no other business to come before the Board, Chairman DiGiulian adjourned the meeting at 12:57 p.m.

Minutes by: Paula McFarland

Approved on: October 12, 2004

*Regina Thorn Corbett*

Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

*John F. Ribble III*

John F. Ribble III, Vice Chairman, for  
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 1, 2003. The following Board Members were present: Chairman John DiGiulian; John Ribble; James Hart; James Pammel; and V. Max Beard. Paul Hammack and Nancy Gibb were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:02 a.m.

Mr. Ribble introduced Mr. Beard, the newly appointed Board member. Chairman DiGiulian asked Mr. Beard to give a brief autobiography. Mr. Beard stated that he had been a Fairfax County resident for approximately 30 years, lived in the Mount Vernon District, was involved in commercial real estate and a brokerage business, sat on the Virginia State Bar Disciplinary Board in Richmond as a layperson, and was involved with Inova Health Care System on the Alexandria Hospital Foundation. He said he was looking forward to being of service on the Board of Zoning Appeals.

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.

~ ~ ~ July 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M. LORD FAIRFAX, LLC, VC 2003-PR-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in front yard of a corner lot. Located at 8761 Cedar Meadow Ct. on approx. 8,895 sq. ft. of land zoned R-4. Providence District. Tax Map 49-1 ((26)) 1.

Mr. Hart gave a disclosure and stated that it would not affect his ability to participate in the case.

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, the applicant's agent, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a fence greater than 4.0 feet in height to be constructed in the front yard of a corner lot. The requested height was 6.0 feet. The maximum height permitted is 4.0 feet; 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 said the fence would serve as a noise and privacy barrier to Cedar Lane, a major thoroughfare. She stated that the property was characterized by an extraordinary situation or condition in that it was a corner lot and had two front yards. Ms. Strobel said that the applicant's engineer had conducted studies to ensure that adequate sight distance would be provided and that the fence would not hamper the sight distance. She stated that there would be no adverse visual impacts associated with the proposed fence. She noted that the property was subject to proffers that required noise attenuation and the proposed fence design would meet those requirements.

Ms. Strobel stated that the applicant did meet the standards for a variance. She said that a strict application of the Ordinance would produce undue hardship because the height of a fence reduced to 4.0 feet was inadequate next to Cedar Lane and would jeopardize the security, privacy and screening of the existing home. Ms. Strobel said the proposed fence would not be a detriment to adjacent properties and would not affect sight distance. She explained that the fence would be landscaped so it would be attractive from Cedar Lane and it would be of a size and scale in keeping with the residential character of the area. She stated that the applicant's proposal was a reasonable request in the context of the physical constraints associated with the property.

Ms. Strobel submitted letters of support from property owners in the area. She requested the Board waive the 8-day waiting period for the application because there was a timing issue due to some confusion that arose when the applicant initially had discussions with Zoning regarding the possibility of approving administratively.

Mr. Pammel asked how far off the right-of-way the fence would be located. Ms. Strobel replied that it would be approximately 8.0 to 10.0 feet.

Chairman DiGiulian called for speakers.

~ ~ ~ July 1, 2003, LORD FAIRFAX, LLC, VC 2003-PR-062, continued from Page 577

Robert Luisi, 8764 Cedar Meadow Court, Vienna, Virginia, came forward to speak in support of the application. He said the proposed fence would be an asset that would help with the noisy street.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-PR-062 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LORD FAIRFAX, LLC, VC 2003-PR-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in front yard of a corner lot. Located at 8761 Cedar Meadow Ct. on approx. 8,895 sq. ft. of land zoned R-4. Providence District. Tax Map 49-1 ((26)) 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 1, 2003; 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 prescribed criteria for the granting of a variance.
3. When the property was rezoned, it was subject to proffers that required sound attenuation, and that is the purpose of the fence as well as for privacy concerns.
4. Cedar Lane is classified as a major thoroughfare, thus the need for noise attenuation standards.
5. The application meets the standards of the Comprehensive Plan as per the proffer requirements.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.

~ ~ ~ July 1, 2003, LORD FAIRFAX, LLC, VC 2003-PR-062, continued from Page 578

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 fence shown on the plat prepared by Land Design Consultants, dated February, 2003, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Pammel moved to waive the 8-day waiting period. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN MARK PATTERSON, VC 2003-BR-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line. Located at 4126 Nomis Dr. on approx. 14,435 sq. ft. of land zoned R-3. Braddock District. Tax Map 58-4 ((34)) 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. Steven Mark Patterson, 4126 Nomis Drive, Fairfax, Virginia, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 5.2 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6.8 feet was requested.

Mr. Patterson presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was exceptionally narrow. He said a strict application of the Ordinance would produce undue hardship because there was no other viable location for the proposed garage, which would deny an opportunity to add a garage to house bicycles, tools, and an additional automobile. Mr. Patterson explained that the hardship was not shared by the other 13 residences on the cul-de-sac which all had 2-car garages. He stated that the proposed addition would not be a detriment to the adjacent properties. He said he had spoken with all six of the adjacent property owners on Nomis Drive and one of the property owners on Tartan View and all had given their consent verbally. Mr. Patterson stated that the proposed addition would be constructed in a style consistent with and complimentary to the neighborhood and no other structure would be encroached upon. He said the variance would be in harmony

~ ~ ~ July 1, 2003, STEVEN MARK PATTERSON, VC 2003-BR-065, continued from Page 579

with the intended spirit and purpose of the Ordinance and would not be contrary to the public interest.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2003-BR-065 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN MARK PATTERSON, VC 2003-BR-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line. Located at 4126 Nomis Dr. on approx. 14,435 sq. ft. of land zoned R-3. Braddock District. Tax Map 58-4 ((34)) 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 July 1, 2003; 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 showing compliance with the required standards for a variance.
3. The lot is only approximately 80 feet wide.
4. The house was placed on the lot at an angle.
5. Any addition would probably intrude into the minimum required side yard.
6. The other homes on the street have 2-car garages. It is reasonable to expect that somebody would want to make use of the property to have a 2-car garage.
7. The addition would be in the appropriate place.
8. The 5.2 foot measurement would occur only in one corner of the addition.
9. It is not ideal, but the applicant has complied with the required standards, and there is no opposition to 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

~ ~ ~ July 1, 2003, STEVEN MARK PATTERSON, VC 2003-BR-065, continued from Page 580

- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 L.S. Whitson, dated February 19, 1992, as revised by Steven M. Patterson, through April 15, 2003, 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 and Ms. Gibb were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RINA & LEE AARON, VC 2003-SP-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from rear lot line. Located at 11001 Highridge St. on approx. 20,410 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((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. Lee and Rina Aaron, 11001 Highridge Street, Fairfax Station, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of addition 17.5 feet from rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 7.5 feet was requested.

Mr. Aaron presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested to enclose the existing deck that backed up against preserved woodlands. He explained that they had a child who was highly allergic to mosquitoes and a child

~ ~ ~ July 1, 2003, RINA & LEE AARON, VC 2003-SP-076, continued from Page 581

who had allergies and the enclosure would allow use of their living space.

Chairman DiGiulian asked the applicant to describe the characteristics of the lot that necessitated the variance request. Mr. Aaron said the back of their home was completely surrounded with woods.

Mr. Ribble noted that the applicants' letter of justification stated that the shallowness of the rear yard was the justification. He also noted that the location of a drain field in the front yard contributed to the placement of the house.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-SP-076 for the reasons stated in the Resolution.

Mr. Pammel noted that there was a picket fence that was located outside of the applicants' property on the 20-foot bridle path easement. He suggested the applicants look at that issue. Mrs. Aaron replied that they had permission in writing to have the fence in that location.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RINA & LEE AARON, VC 2003-SP-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from rear lot line. Located at 11001 Highridge St. on approx. 20,410 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((5)) 6. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 1, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant has met the nine standards required for a variance.
3. The applicant cited the shallowness of the rear yard and the way the house is situated 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

~ ~ ~ July 1, 2003, RINA & LEE AARON, VC 2003-SP-076, continued from Page 582

the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bryant L. Robinson, dated March 4, 2003, 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 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE BEREA CHURCH OF CHRIST, SPA 79-D-141 Appl. under Sect(s). 3-103 of the Zoning Ordinance for an existing church to permit a child care center, nursery school and building addition. Located at 8817 Leesburg Pi. on approx. 1.55 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 10A.

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, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 79-D-141, previously approved for a church and related uses, to permit the addition of child care center and nursery school uses and construction of a building addition. The proposed child care center and nursery school would have a maximum daily enrollment of 21 children, with maximum hours from 6:45 a.m. to 6:45 p.m., Monday through Friday. The building addition would consist of 4,730

~ ~ ~ July 1, 2003, TRUSTEES OF THE BEREA CHURCH OF CHRIST, SPA 79-D-141, continued from Page 583

square feet, increasing the size of the church from 4,792 to 9,522 square feet. There were no proposed changes to the number of seats or parking.

Mr. Sherman noted that revised development conditions and a revised affidavit were distributed at the hearing. He said staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended the approval of the special permit amendment subject to the approval of the revised proposed development conditions dated July 1, 2003.

Mr. McBride presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the church had been located on the subject property since the late '50s and underwent an expansion to the existing development in the '60s. Since then, he said, the widening of Route 7 and the residential development to the west and south had impacted the church. Mr. McBride said he had spoken with the Board of Directors of the Carrington subdivision regarding their concerns about screening and buffering and the possibility of future expansion of the child care center beyond the proposed maximum daily enrollment of 21 children. He said the development conditions had been amended to reflect the provision of full transitional screening on the southwest border. He stated that the developer of the community, who was still on bond, was required to extend the existing board-on-board fence along the western border. Mr. McBride presented to the BZA a letter of support, a petition of support with 43 signatures, and a letter from the trustees and congregation of the church to the Carrington Homeowners Association stating the intent to have only a 21-child daycare center. He stated that the applicant agreed with the development conditions with one exception. He said that Development Condition 17 was vague, and he explained that the church had a decorative fence within the area of the proposed ancillary easement discussed in that condition that they wanted to preserve.

Mr. Pammel asked what the addition would be used for when not in use by the daycare center. Mr. McBride explained that the primary use was to enlarge the entrance and vestibule area to the church and to provide a sufficient number of handicapped restrooms for the congregation, additional office space for the minister and his assistants and Sunday school classroom space.

Mr. Hart asked Mr. McBride to indicate the location of the fence the developer was to add. Mr. McBride pointed out the location on the overhead and explained that it would be on the western boundary and would extend beyond the parking lot. He also pointed out the location of the full transitional screening on the property that the church had committed to provide.

Mr. Hart asked for an explanation regarding the reference of standard end-of-road signs in Development Condition 16. Mr. McBride said he understood that to be a reference to additional signage on the existing gates, but he suggested the question be directed to staff. Mr. Sherman explained that the Department of Transportation (DOT) requested the signage to avoid the situation where drivers would pull into a gated drive when the gate was closed and had to reverse back out.

Mr. Hart asked if the pedestrian connection from Jarrett Valley Drive that was referenced in DOT's memorandum had been added. Mr. McBride pointed out where the sidewalk connection was located on the special permit plat.

Mr. Hart asked what the purpose was of the ancillary easement referenced in Development Condition 17. Mr. Sherman replied that it was requested by DOT for a trail planned to be located on the southern side of Leesburg Pike. A brief discussion ensued regarding the use of more specific language in the development condition regarding the easement, the size of the easement, and the existence of a fence in that location.

In regard to Development Condition 1, Mr. Hart asked if the church would have to reapply for a special permit amendment if it leased out the daycare operation. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the church would not have to reapply, but the church would be responsible for the enforcement of the conditions.

Mr. Ribble asked when the first part of the fence on the western boundary was constructed and why it was not completed. Mr. McBride replied that he did not know why it was incomplete, but that the first part was constructed when the Affordable Dwelling Units (ADUs) were constructed approximately two years prior to



~ ~ ~ July 1, 2003, TRUSTEES OF THE BEREA CHURCH OF CHRIST, SPA 79-D-141, continued from Page 584

the hearing. He said the developer had agreed to complete the fence, and he understood it was to be completed in the summer or fall of 2003.

Mr. Ribble asked what would happen if the developer did not complete the fence. Ms. Langdon replied that there would be a final inspection, and the developer's bond money would not be returned until he met the proffers or conditions.

Chairman DiGiulian called for speakers.

Shereen Abu Zobaa, 8810 Jarrett Valley Drive, Vienna, Virginia, came forward to speak in opposition to the application. She said her property was located adjacent to the church, and she had several concerns, which included an increase in traffic as a result of the daycare facility, the noise level of the children when outside for recreation and the children's ability to wander off.

Mr. McBride stated, in his rebuttal, that the signalized intersection with a dedicated left-turn lane serviced all the properties and that it was safer than an un-signalized intersection. He said there was an ample stacking area for dropping off the children without stacking out onto Jarrett Valley Drive. He explained that a berm and a solid board fence was required for the small outdoor play area located on the western boundary for noise attenuation purposes from Route 7, and he said that he did not think 21 children would increase the noise to the single-family homes.

Chairman DiGiulian noted that the Board had received letters of opposition from Erin McComas and Mark Martin. Mr. McBride said Mr. Martin was the vice president of the Carrington Homeowners Association that he had spoken with, and that his letter was written prior to the discussions and resolution of the fence and landscaping issues. Mr. McBride said the issues in Ms. McComas' letter were addressed at the hearing.

Mark Martin, Vice President of the Carrington Homeowners Association (HOA), came forward to speak. He stated that he was not formally in opposition because many of the concerns had been addressed, but he wanted to clarify that the HOA had received a letter from the church indicating the maximum enrollment of the daycare center would be 21 children and he wanted to confirm that the letter was entered into the record. He said he did not believe the kiss-and-drop issue had been resolved and that the 30 feet was not enough space for a reasonable backup that would be expected when dropping off preschoolers.

Mr. McBride stated, in his rebuttal, that the letter Mr. Martin mentioned was the letter he had entered into the record. He said there was a drop-off loop that was more than 30 feet, and along with the parking area, drop-off would not back into Jarrett Valley Drive. He stated that DOT staff did not request any special conditions or redesign of the plan.

Mr. Hart noted that a letter had been received from Ms. Snider in regard to using stone or iron fencing materials around the tot lot to be more in keeping with the neighborhood. Mr. McBride stated that he had not seen that letter, but that the tot lot would not be in sight from any of the single-family homes, from Route 7 or Jarrett Valley Drive.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 79-D-141 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE BEREA CHURCH OF CHRIST, SPA 79-D-141 Appl. under Sect(s). 3-103 of the Zoning Ordinance for an existing church to permit a child care center, nursery school and building addition. Located at 8817 Leesburg Pi. on approx. 1.55 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 10A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ July 1, 2003, TRUSTEES OF THE BEREA CHURCH OF CHRIST, SPA 79-D-141, continued from Page 585

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The primary focus is not a 21-child daycare center, but primarily for the expansion of the church to accommodate handicapped bathrooms, a better access vestibule, offices for the administration, and Sunday school classrooms. The child care center is secondary. That element of the application was fairly justified.
3. The agent has worked with the community and has resolved the transitional screening issue.
4. The fence issue on the northwest boundary is not under our control. It is a bond issue, as staff stated, with respect to the developer of that portion of Carrington community.
5. With regard to traffic, ten vehicle trips in and out in the morning and the same in the afternoon is what would be anticipated with 21 students and single-car drop-offs spread out over a period of approximately three hours. The impact would be minimal. It would not impact the community or add further pressure on the left-turn lane.
6. The fact that there is a dedicated left-turn lane for access onto Jarrett Valley Drive is a feature that is not available for most applications before the BZA. That is a plus in the application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 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, 8817 Leesburg Pike (1.55 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 Robson Group Architects, dated December 30, 2002, revised through June 5, 2003, 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. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
6. Upon issuance of a Non-Residential Use Permit (Non-RUP) for SPA 79-D-141, the maximum total daily enrollment for the child care center and nursery school shall not exceed 21 children.
7. Upon issuance of a Non-Residential Use Permit (Non-RUP) for SPA 79-D-141, 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.

~ ~ ~ July 1, 2003, TRUSTEES OF THE BEREA CHURCH OF CHRIST, SPA 79-D-141, continued from Page 586

8. Any proposed new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance except that the maximum height of the light poles shall be 12.0 feet.
9. Transitional screening shall be required with the following modifications:
  - a. Notwithstanding what is shown on the plat, Transitional Screening 1 shall be provided along the entire length of both the northwestern and southwestern lot lines.
  - b. Along all other lot lines, existing vegetation supplemented by additional plantings, as shown on the plat, shall satisfy the screening requirement.
  - c. Size, number and species of plant material shall be provided as approved by the Urban Forestry Division.
10. The maximum seating capacity of the church shall be limited to 200.
11. The building shall be constructed in substantial conformance with the design depicted on Attachment A, Schematic Design.
12. The Applicant shall provide onsite storm water detention and best management practices in accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. These facilities shall be constructed in the general locations shown on the Special Permit Plat. The location of these facilities shall not encroach into any required areas of Transitional Screening or result in the displacement of any existing or proposed vegetation as shown on the Special Permit Plat.
13. Foundation plantings shall be maintained around the existing church building and shall be planted around the new addition to soften the visual impact of the structure. The species, size and location of the plantings shall be approved by the Urban Forestry Division of DPWES.
14. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
15. The board fence and berm shown on the plat adjacent to the play area shall be designed using materials and style intended to minimize sound impacts on the play area.
16. Signs compliant with the standard End of Road signs described in the Manual of Uniform Traffic Control Devices (OM4-3) shall be affixed to and maintained on each of the four gates across the two entrances onto Jarrett Valley Drive.
17. The Applicant shall provide ancillary easements, to accommodate a sidewalk/trail, at no cost to the Board of Supervisors of approximately 15 feet in width along the Route 7 frontage.

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 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9,

~ ~ ~ July 1, 2003, TRUSTEES OF THE BEREA CHURCH OF CHRIST, SPA 79-D-141, continued from Page 587

2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 1, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN MCNAMARA, SP 2003-PR-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 2.7 ft. from rear lot line and 0.5 ft. from side lot line. Located at 2176 Harithy Dr. on approx. 3,573 sq. ft. of land zoned PDH-5. Providence District. Tax Map 39-2 ((53)) 32.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McNamara, 2176 Harithy Drive, Dunn Loring, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit based on error in building location to permit an addition to remain 2.7 feet from the rear lot line and 0.5 feet from the side lot line. A minimum rear yard of 20 feet and a minimum side yard of 10 feet are required; therefore, reductions of 17.3 and 9.5 feet, respectively, were requested.

Mr. Hart asked whether a building permit would have been required to build the structure and whether one was obtained. Mr. Sherman replied that a building permit would have been required and one was obtained for a deck and one was requested for the enclosure of the deck, which was denied. Mr. Hart asked to see copies of the building permits. Mr. Sherman presented the documents.

Mr. McNamara presented the special permit request as outlined in the statement of justification submitted with the application. He said the problem stemmed from the contractor turning in the paperwork for the building permit for the second part of the project after the deck was enclosed into a screened porch. He went through a timeline of the project. Mr. McNamara said the screened porch was about 25 percent of the 38-foot width of the rear yard with a 125-square-foot footprint of the available 630 square feet of rear yard space, about 19 percent of the available floor area in the rear yard. He stated that many of the decks and patios in the neighborhood were 70 to 90 percent of the available floor area with some decks in excess of 300 square feet. He said there were two trees in the common area between the porch and Harithy Drive, a third tree between the porch and Gallows Road, and he had added two additional trees along the rear fence line to add additional screening along with extensive landscaping in his yard.

Mr. Hart asked if Mr. Mansoor was present. Mr. McNamara stated that he was not.

Mr. Hart asked when the applicant had hired Mr. Mansoor. Mr. McNamara replied that he hired him in June of 2001.

Mr. Hart asked what exactly he hired him to do. Mr. McNamara replied that he was to build the screen porch addition as it was laid out in the packet. He said Mr. Mansoor said he would build the deck first and would come back after the heavy deck season was over and finish the porch.

Mr. Hart asked the applicant if he had a written contract with Mr. Mansoor. Mr. McNamara replied that the only thing he had gotten from Mr. Mansoor was the design.

Mr. Hart noted that the building permit application dated June 4, 2001, signed by the applicant clearly stated it was for a 12-by-12 open deck with a 3-by-6 step, 52 inches high, with no mention of a porch. He noted that an August building permit application with an illegible signature for a 10-by-12 deck enclosure was denied. He said he would need to understand what was agreed to in June as far as the scope of work and how it got to a point that the builder built the screen porch when the applicant had told the County a deck was being built. Mr. Hart said he wanted to see what documentation the applicant had of the agreement with Mr. Mansoor, when it was made, and what the scope of work was. Mr. McNamara presented documents to Mr. Hart.

~ ~ ~ July 1, 2003, JOHN MCNAMARA, SP 2003-PR-017, continued from Page 588

Mr. Hart asked if the applicant had submitted an application to his homeowners association. Mr. McNamara replied that he had submitted an application in 2003 which was denied and appealed because the original builder's architectural committee approved porches in the neighborhood.

Mr. Hart asked staff if the builder could have built the subject porch without getting approval. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it would have had to have been shown on his development plans when they were submitted for zoning.

Mr. Hart said he understood it was not shown on the development plans so the builder would have to come back for approval. Ms. Langdon said that was correct.

Mr. Hart asked if any variances had been granted in the subdivision for anything similar. Mr. Sherman answered no.

Chairman DiGiulian called for speakers.

Joe Burton, Chairman of the Architectural Control Committee (ACC) for the Governors Square Homeowners Association, came forward to speak in opposition to the application. He said the committee was formed at the beginning of 2002. He explained that the builder, John Lang, did some approvals for improvement requests for homeowners that had purchased and occupied their house prior to the time the homeowners association (HOA) was formed. Once the HOA was formed, Mr. Burton said the ACC collected the documents that had been submitted to the builder and sent out requests to the 42 units in the subdivision requesting architectural improvement request forms to document what had been done.

Mr. Burton said a request form was received from the applicant in September of 2002, which the ACC reviewed. He read into the record the ACC's response to the applicant, which stated in part that the improvements must meet Fairfax County requirements and that the ACC would withhold review and any approval until the ACC was provided documents certifying Fairfax County's approval. He said the ACC did not receive a response from the applicant. Mr. Burton said the ACC sent another letter on November 14, 2002, asking the applicant to resubmit the requested County approvals. He said the ACC did not receive a response from the applicant.

Mr. Burton read a letter the ACC received from a homeowner adjacent to the applicant who had stated they would be putting their home up for sale in the spring of 2003, requesting the HOA look into the matter of the adjacent screened porch and to take whatever remedial actions it deemed appropriate. Mr. Burton said the ACC sent another letter to the applicant on January 3, 2003, noting that the ACC had received no response to its requests and letters, asking that a written schedule be submitted on or before February 15, 2003, for the proposed hearing dates for any variance and stating that the ACC would proceed to review the application if no response was obtained. He said the ACC received no response.

Mr. Burton said that on March 25, 2003, the ACC did their review, disapproved the structure and sent a certified notice to the applicant advising of the disapproval and requesting the structure be removed. He said the applicant appealed the determination, and the HOA Board asked the ACC to be as specific as possible about the denial, so the ACC issued a certified letter with the specifics to the applicant again denying the application on June 25, 2003.

Mark Andrews, no address given, came forward to speak in opposition to the application. He noted that there were different setbacks for a deck as opposed to an enclosed porch. He said the backyards in the subdivision faced each other and that a porch pushed out to the property line created an obstruction of view for adjacent property owners. Mr. Andrews stated that a variance had to demonstrate a hardship, and the only hardship faced was that the structure had been built and a remedial solution was needed. He said if the structure was approved, it would change the nature and character of the community.

Haydon Krumbholz, 2169 Harithy Drive, Dunn Loring, Virginia, came forward to speak in opposition to the application. She noted that she had submitted a written statement. She said she had a deck built by Mr. Mansoor and had a contract specifying the design and cost.

Mary Shupack, 2180 Harithy Drive, Dunn Loring, Virginia, came forward to speak in opposition to the

~ ~ ~ July 1, 2003, JOHN MCNAMARA, SP 2003-PR-017, continued from Page 589

application. She noted that she had submitted a written statement, but said there was an error in Item 1 of her statement in that the word "not" should have preceded the phrase "compliance with the County regulations."

Jim Halling, 2182 Harithy Drive, Dunn Loring, Virginia, came forward to speak in opposition to the application. He noted that he had submitted a written statement. He presented five photographs taken of the neighborhood on June 24, 2003, and he explained what they depicted.

Mr. McNamara, in his rebuttal, stated that he was surprised at the level of opposition from a few of his neighbors. He said the view that would be blocked was of the fence along Gallows Road. He stated that the first he was aware of any concerns about the addition was right before the end of 2002 from the ACC. Mr. McNamara said he had heard of no other concerns from others and that Ms. Krumbholz had commented to the effect of, "Oh, it's nice," when she and her husband had been on the deck.

Mr. McNamara said that when the neighbors who had the impending sale expressed concern at the HOA meeting, he told them that if they had a contract that was in jeopardy over the addition, he would give them a letter and get the County to let him take it down quickly. He stated that he had been told not to take it down until he had done a building permit. Mr. McNamara said the neighbors subsequently sold the house, having received multiple offers. He said that 25 percent of the homes in the neighborhood had sold within the prior year, including the recent sale of another adjacent property.

Chairman DiGiulian closed the public hearing.

A brief discussion ensued between Mr. Hart and staff regarding the subpoenaing of documents. Mr. Hart said he would like to defer the case, hear from Mr. Mansoor regarding the sequence between the two building permits and subpoena his file to include proposals, contracts, bids and correspondence.

Mr. Hart commented that since the HOA had denied the application and if they continued to deny it, it would be moot because the BZA did not have the authority to dictate to the HOA what they were going to do. He said a deferral might allow the applicant to consider that no matter what the BZA did, if the HOA did not approve it, it was moot because the HOA could go to court and have it torn down. He suggested the applicant consider whether he wanted to go forward with the case because the applicant would likely not get over the hurdle with the HOA.

Mr. Hart moved to defer SP 2003-PR-017 for 60 days to get Mr. Mansoor and his file. The motion failed for lack of a second.

Mr. Pammel moved to deny SP 2003-PR-017 for the reasons stated in the Resolution. Additionally, he stated his motion was based on the fact that the building permits were not properly filed, were rejected by the County, and nevertheless the structure was put in place anyway, and primarily because testimony was heard that the addition was not consistent with the style of architecture for the community, and the community was concerned with respect to that.

Mr. Ribble commented that there was a period of time for reconsideration and that the applicant could bring in the contract to prove that this was caused by the contractor. He stated that he supported the motion to deny. Chairman DiGiulian noted that the reconsideration request would have to be submitted by the next meeting.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN MCNAMARA, SP 2003-PR-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 2.7 ft. from rear lot line and 0.5 ft. from side lot line. Located at 2176 Harithy Dr. on approx. 3,573 sq. ft. of land zoned PDH-5. Providence District. Tax Map 39-2 ((53)) 32. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ July 1, 2003, JOHN MCNAMARA, SP 2003-PR-017, continued from Page 590

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 2003; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has not 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.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 1, 2003, (Tape 2), Scheduled case of:

9:00 A.M. JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. and eave 2.5 ft. from side lot line. Located at 11808 Mallard Rd. on approx. 37,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-2 ((2)) 74. (Def from 6/10/03 for decision only)

Chairman DiGiulian noted that the applicant requested a deferral to July 15, 2003.

Mr. Ribble moved to defer for decision only VC 2003-MV-047 to July 15, 2003, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

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~ ~ ~ July 1, 2003, (Tape 2), Scheduled case of:

9:00 A.M. TASOS DESIGN, INC., VC 2003-LE-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.0 ft. and eave 10.0 ft. from side lot lines and to permit parking area greater than 25% in front yard. Located at 3217 Clayborne Ave. on approx. 10,085 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (7) 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. Jane Kelsey, the applicant's agent, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 11.0 feet, with eaves 10.0 feet, from both side lot lines and to permit a parking area greater than 25% in the front yard. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 4.0 feet and 2.0 feet, respectively, were requested. The proposed parking area would cover an area of approximately 26.3%, and 25% is permitted; therefore, a variance of 1.3% was requested.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She said the applicant had combined two narrow 25-foot lots to make a 50-foot building lot and

~ ~ ~ July 1, 2003, TASOS DESIGN, INC., VC 2003-LE-068, continued from Page 591

wanted to build a structure that was both functional and marketable and which could not be built on a 50-foot lot. She explained that the proposed driveway was short, narrow and typical of most driveways, but the reason it exceeded the 25% was because the lot was narrow with small frontage. Ms. Kelsey stated that the variance of 1.3% for the driveway was very minimal. She explained that the land sloped up from the street, making it necessary to put in low retaining walls to bring in the driveway from the street, and that the applicant proposed to have an underground garage to eliminate some of the parking that would otherwise be in the front yard. She presented photographs of the properties adjacent to each side of the subject property.

Ms. Kelsey said the applicant met the nine required standards for a variance. She said the physical condition was the narrowness of the building lot and the topography in the front of the lot. She stated that the subdivision was zoned R-2 and was recorded in 1927, prior to the first Zoning Ordinance being adopted in 1941. Ms. Kelsey said the lot was a substandard lot that did not meet the required lot width or lot size. She said there was only one other lot in the subdivision on the same street that was vacant, so this was not a general condition. She stated that the character of the area would not be changed by the granting of the variance, but would be an asset to the street and the community. Ms. Kelsey said the applicant had spoken with many of his neighbors, and she noted that copies of letters indicating the neighbors had no opposition had been submitted prior to the hearing and that three additional letters were presented to staff at the hearing.

Mr. Pammel asked if the lots on either side of the two subject lots had been developed and whether the only two lots remaining were the two subject lots. Ms. Kelsey replied that that was correct.

Mr. Hart asked questions regarding the driveway, the 2-car garage and the steps. Ms. Kelsey indicated the locations on the plat and explained the layout.

Mr. Hart asked staff whether the neighbor's driveway which encroached on the subject property was counted towards the percentage and whether the steps were included. Ms. Langdon replied that neither were included.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-LE-068 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TASOS DESIGN, INC., VC 2003-LE-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.0 ft. and eave 10.0 ft. from side lot lines and to permit parking area greater than 25% in front yard. Located at 3217 Clayborne Ave. on approx. 10,085 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((18)) (7) 37. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 1, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the nine standards required for a variance.
3. The owner's agent cited the narrowness of the property and the topographic situation in the front 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 dwelling and parking area, shown on the plat prepared by Bryant L. Robinson, dated December 11, 2002, as revised through March 19, 2003, 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 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 1, 2003, (Tape 2), Scheduled case of:

9:00 A.M. NOVUS LLC, SPA 80-C-091-2 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 80-C-091 previously approved for a skating facility, health club and related facilities to permit change in permittee, increase in land area and building addition. Located at 1800 Michael Faraday Ct. on approx. 6.65 ac. of land zoned I-5. Hunter Mill District. Tax Map 18-3 ((5)) 8C and 9.

Chairman DiGiulian noted that SPA 80-C-091-2 had been moved to September 9, 2003, at 9:00 a.m., at the applicant's request.

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~ ~ ~ July 1, 2003, (Tape 2), Scheduled case of:

9:00 A.M. RONALD L. AND MA BENITA MILAGROS WATSON, SP 2003-MV-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 accessory structure to remain 2.1 ft. and eave 1.2 ft. from side lot line. Located at 8003 Imperial St. on approx. 10,890 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((5)) (12) 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. Jane Kelsey, the applicant's agent, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an accessory structure, consisting of a detached garage, to remain 2.1 feet with eave 1.2 feet from a side lot line. Accessory structures greater than 8.5 feet in height are required to meet the minimum side yard requirements. A minimum side yard of 15 feet is required; however, eaves are permitted to extend into the side yard 3.0 feet; therefore, modifications of 9.9 feet and 7.8 feet, respectively, were requested.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She presented photographs that showed the relationship of the garage to the surrounding structures and the view from the street. She pointed out the fence, which existed prior to the garage construction, located on the applicants' property next to the garage and stated that the garage was built without having to go onto the neighbor's property; however, the applicants had obtained letters from the previous and current owner of that neighboring property indicating no objection to the garage remaining in its present location and no objection to the applicants going onto their property, if needed, to maintain the garage. She noted that letters from several adjacent property owners had been submitted.

Ms. Kelsey stated that the applicants acted in good faith. She said they had a contractor and expected the contractor to obtain all the necessary building permits; however, he did not. She explained that the applicant notified the County after having dismissed the contractor, the Department of Public Works and Environmental Services (DPWES), Code Enforcement Branch investigated, and criminal charges were filed against the contractor. Ms. Kelsey noted that Penelope Rood, Code Enforcement Coordinator, DPWES, Code Enforcement Division, was present and could expand on information regarding the contractor. Ms. Kelsey said the applicants had another contractor look at the structure who agreed that there were no unsafe conditions. She explained that the applicants did hire another contractor to put a roof on the garage to preserve what had already been constructed. She said the garage was in character with the area and the applicants were not suspicious regarding the garage being built close to the property line because many other garages in the area were similarly built close to the property lines. Ms. Kelsey explained that garages could be constructed within 2.0 feet of the property line if they were fireproof and of masonry construction, and 4.0 feet if they were not, prior to the 1978 Zoning Ordinance adoption. She pointed out that most of the garages in the area were 2-car garages, but the applicants' was a 1-car garage.

Mr. Hart asked if the applicants would agree to a development condition requiring the applicants obtain a building permit and inspections. Ms. Kelsey answered affirmatively.

A brief discussion ensued regarding the overhead electrical line near the garage, which Ms. Kelsey and the applicant stated had been resolved by an electrical contractor who had obtained permits, and the electrical had since been inspected and approved.

~ ~ ~ July 1, 2003, RONALD L. AND MA BENITA MILAGROS WATSON, SP 2003-MV-014, continued from Page 594

Mr. Ribble asked what Ms. Rood's role was in the matter. Ms. Rood explained that she became involved with the applicants and at least one other neighbor in the area when permits were being checked out and it was determined that the applicants had inadvertently contracted with an unlicensed contractor well known to her agency that had been prosecuted on numerous occasions. She stated that she would be happy to assist with the intervention with other parts of her agency to make sure the permitting and inspection process was done.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2003-MV-014 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD L. AND MA BENITA MILAGROS WATSON, SP 2003-MV-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 accessory structure to remain 2.1 ft. and eave 1.2 ft. from side lot line. Located at 8003 Imperial St. on approx. 10,890 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((5)) (12) 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 1, 2003; 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.

~ ~ ~ July 1, 2003, RONALD L. AND MA BENITA MILAGROS WATSON, SP 2003-MV-014, continued from Page 595

- 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 detached garage, as shown on the plat prepared by Bryant L. Robinson, dated January 31, 2003, as revised through April 9, 2003, submitted with this application and is not transferable to other land.
- 2. All applicable permits 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.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 9, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 1, 2003, (Tape 2), After Agenda Item:

Approval of July 23, 2002 Minutes

Mr. Ribble moved to approve the minutes. Mr. Hart seconded the motion, which carried by a vote of 4-0-1. Mr. Pammel abstained from the vote. Mr. Hammack and Ms. Gibb were absent from the meeting.

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~ ~ ~ July 1, 2003, (Tape 2), After Agenda Item:

Request for Intent to Defer  
Lawrence E. Anderson, VC 2003-LE-061

Mr. Pammel moved to deny the request for intent to defer VC 2003-LE-061. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

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~ ~ ~ July 1, 2003, (Tape 2), After Agenda Item:

Approval of June 24, 2003 Resolutions


Mr. Ribble moved to approve the Resolutions. Mr. Hart seconded the motion, which carried by a vote of 4-0-1. Mr. Pammel abstained from the vote. Mr. Hammack and Ms. Gibb were absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 11:12 a.m.

Minutes by: Kathleen A. Knoth

Approved on: October 19, 2004

  
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 Regina Thorn Corbett, Clerk  
 Board of Zoning Appeals

  
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 John F. Ribble III, Vice Chairman, for  
 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 8, 2003. The following Board Members were present: Chairman John DiGiulian, Max Beard, Nancy Gibb, James Hart, Paul Hammack, James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:01 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.

~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. SHILOH BAPTIST CHURCH, SPA 83-V-090 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-V-090 previously approved for a church to permit a building addition, site modifications and increase in land area. Located at 10704 and 10672 Gunston Rd. on approx. 6.72 ac. of land zoned R-E. Mt. Vernon District. Tax Map 114-4 ((1)) 21 and 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Crain, 9114 Industry Drive, Manassas Park, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, Special Permit and Variance Branch, presented the special permit request as contained in the staff report. She stated that the applicant requested the special permit amendment to permit the placement of two trailers to the west of existing church building, which would increase the gross floor area of the church property by approximately 1,522 square feet. She stated that the trailers would be located on a 50 x 50 feet asphalt pad located approximately 50 feet from the southern lot line and would provide rooms for Sunday school classes only. Ms. Stanfield stated that the request was also for an increase in parking from 36 to 39 spaces. She stated that neither the seating nor the hours of operation would change with this special permit amendment request and therefore, 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 of the application.

Mr. Crain presented the special permit request as outlined in the statement of justification submitted with the application. He concurred with staff's presentation and asked for the Board's approval of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 83-V-090 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHILOH BAPTIST CHURCH, SPA 83-V-090 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-V-090 previously approved for a church to permit a building addition, site modifications and increase in land area. Located at 10704 and 10672 Gunston Rd. on approx. 6.72 ac. of land zoned R-E. Mt. Vernon District. Tax Map 114-4 ((1)) 21 and 22. 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 8, 2003; 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

~ ~ ~ July 8, 2003, SHILOH BAPTIST CHURCH, SPA 83-V-090, continued from Page 597

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-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, 10704 Gunston 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 Harold A. Logan Associates, P.C., dated January 15, 2003, revised through May 27, 2003
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity of the church shall not exceed one-hundred forty-eight (148) seats.
6. Transitional screening requirements shall be modified along all lot lines to permit existing vegetation to satisfy the requirements.
7. The barrier requirement shall be waived along all lot lines.
8. Signs shall be permitted subject to the provisions of Article 12 of the Zoning Ordinance.
9. Parking shall be provided as depicted on the special permit plat. All parking for the use shall be on site.
10. Foundation plantings shall be provided around the proposed trailers to soften their appearance and to blend in with the surrounding area; the species, size, number and location of such plantings shall be determined in consultation with the Urban Forestry Division of DPWES.
11. All new outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All existing light fixtures which are not full cut-off fixtures, as defined in Article 20 of the Zoning Ordinance, shall be fitted with shields to control glare and to prevent light from being emitted above the horizontal plane.
12. Interior parking lot landscaping shall be maintained in accordance with Article 11 of the Zoning Ordinance.
13. The trailers shall be approved for a maximum period of five (5) years from the date of approval of the Non-Residential Permit (Non-RUP).

These conditions incorporate and supercede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required

~ ~ ~ July 8, 2003, SHILOH BAPTIST CHURCH, SPA 83-V-090, continued from Page 598

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 July 16, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MATTHEW AND ELYSSA ABELSON, VC 2003-HM-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. and eave 10.8 ft. from rear lot line and deck 9.1 ft. from rear lot line. Located at 2459 Dakota Lakes Dr. on approx. 8,894 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((16)) 84.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Matthew and Elyssa Abelson, 2459 Dakota Lakes Drive, Herndon, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. She stated that the applicant requested construction of an addition 12.3 feet and an eave 10.8 feet from rear the lot line and a deck 9.1 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet with a permitted extension of 3.0 feet for the eave and a minimum rear yard of 12.0 feet for the deck; therefore, a variance of 12.7 feet was requested for the addition, 11.2 feet for the eave and 3.9 feet for the deck.

Mr. Abelson presented the variance request as outlined in the statement of justification submitted with the application. He stated that their property was located in a cul-de-sac which made the property pie shaped in the rear yard which makes it wide but not deep. He stated that there currently was an existing deck that would be removed and replaced with the proposed screened-in porch. He stated that the deck would only be visible from the two immediate neighbors because the property backed to wooded common property.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-HM-067 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MATTHEW AND ELYSSA ABELSON, VC 2003-HM-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. and eave 10.8 ft. from rear lot line and deck 9.1 ft. from rear lot line. Located at 2459 Dakota Lakes Dr. on approx. 8,894 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((16)) 84. 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

~ ~ ~ July 8, 2003, MATTHEW AND ELYSSA ABELSON, VC 2003-HM-067, continued from Page 599

applicable State and County Codes and with the by-laws of 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 8, 2003; 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 has an irregular shape and the house is located to the rear portion of the lot requiring the need for the variance request.
4. The house backs up to common open space so there is no impact on adjoining 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 the addition and deck shown on the plat prepared by Bryant L. Robinson of Alexandria Surveys International, LLC dated March 4, 2003 and 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.



~ ~ ~ July 8, 2003, MATTHEW AND ELYSSA ABELSON, VC 2003-HM-067, continued from Page 600

3. The addition shall be architectural compatible with the existing dwelling.
4. No portion of the support structure for the deck shall encroach into the sanitary sewer easement.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 July 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      MARK A. TREDWAY, SP 2003-LE-021 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 1.5 ft. from side lot line and 5.1 ft. from rear lot line and deck 7.7 ft. from side lot line. Located at 5637 Glenwood Dr. on approx. 12,601 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((4)) 54B1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fred Taylor, Attorney, Beene, Kenney & Korman, Arlington, Virginia, replied that it was.

Lindsay Shulenberger, Rezoning and Special Exception Branch, presented the special permit request as contained in the staff report. She stated that the applicant requested a shed to remain 1.5 feet from the side lot line and 5.1 feet from the rear lot line and a deck to remain 7.7 feet from the side lot line. The Zoning Ordinance requires a minimum rear yard for the accessory structure of 12.4 feet and a minimum side yard of 12.0 feet; therefore, modifications of 7.3 feet and 10.5 feet were requested for the accessory structure and 4.3 feet was requested for the deck.

Mr. Taylor presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Taylor stated that the property appeared to have been built into a hill and the change in height from the street level to the rear lot line was approximately 50 feet. He stated that most homeowners had built stone retaining walls and that the only location where the lot leveled was the building platform for the house itself, leaving a very steep hill to the house and in the rear of the house. Mr. Taylor stated that the deck functioned more like a patio than a deck and that although it was 5.5 feet from the ground to the house, by the time it extended fully into the yard it was level with the ground. Mr. Taylor submitted photographs to the Board showing the shed on the property which was also subject to the special permit request. He stated that the shed was adjacent to a 10-foot utility easement and because of the neighbors' lot being well treed and having a 10-foot retaining wall, the shed was not a nuisance to the adjoining neighbors. Mr. Taylor stated that the deck was compatible with the house and neighborhood and the adjacent homeowners approved of the request.

Mr. Hammack asked if the shed had electricity running to it. Mr. Taylor stated that he was unsure; however, it was built on a concrete foundation.

Mr. Hart asked how long the deck existed on the property. Mr. Taylor stated 1996/1997 and that Mr. Tredway built it himself. He stated that the deck was considered overbuilt by Mr. Tredway and upon approval of the application he would obtain a building permit.

Mr. Tredway came forward and stated that he was informed by a contractor to build the deck to Code and

~ ~ ~ July 8, 2003, MARK A. TREDWAY, SP 2003-LE-021, continued from Page 601

not concern himself with a building permit. Mr. Tredway stated that the deck was severely overbuilt with 8 x 8 inch posts and 40 or more footers deeper than necessary as well.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2003-LE-021 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK A. TREDWAY, SP 2003-LE-021 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 1.5 ft. from side lot line and 5.1 ft. from rear lot line and deck 7.7 ft. from side lot line. Located at 5637 Glenwood Dr. on approx. 12,601 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((4)) 54B1. 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 8, 2003; 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.

~ ~ ~ July 8, 2003, MARK A. TREDWAY, SP 2003-LE-021, continued from Page 602

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the accessory structure and deck shown on the plat prepared by Larry N. Scartz dated March 17, 2003, and submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained within 30 days of approval of this special permit for the deck and the accessory structure 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.

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 16, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      ALBERT LULUSHI, VC 2003-SU-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 15.3 ft. from side lot line and accessory structure to remain 8.0 ft. from side lot line. Located at 2928 Fox Mill Manor Dr. on approx. 36,188 sq. ft. of land zoned R-1. Sully District. Tax Map 36-4 ((28)) 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. Albert Lulushi, 2928 Fox Mill Manor Drive, Oakton, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant requested construction of a deck 15.3 feet from the side lot line and a playhouse to remain 8.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, variances of 4.7 feet and 12.0 feet were requested.

Mr. Lulushi presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lulushi stated that the house was purchased in November 2002, with all indications from the builder that the deck could be built even larger than the proposal. He stated that they had included the deck within their original contract and then decided to omit it and to build it themselves after purchasing the home. Mr. Lulushi stated that the building permit was initially approved and then rescinded by the County. He said that the variance request was necessary due to the unusual condition of the lot shape and the location of the house on the lot. He stated that the deck did not encroach into any easements and was a smaller deck than others in the neighborhood. Mr. Lulushi submitted photographs to the Board showing the location of the neighbor's house in relation to his property, showing that it would not affect them visually. The photographs also showed that the house was built for two entrances onto a deck, one from a living room and another from the kitchen which should lead onto a deck. He stated that the addition would enhance the value of the property and asked for the Board's approval of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-SU-064 as stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

~ ~ ~ July 8, 2003, ALBERT LULUSHI, VC 2003-SU-064, continued from Page 603

ALBERT LULUSHI, VC 2003-SU-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 15.3 ft. from side lot line and accessory structure to remain 8.0 ft. from side lot line. Located at 2928 Fox Mill Manor Dr. on approx. 36,188 sq. ft. of land zoned R-1. Sully District. Tax Map 36-4 ((28)) 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 July 8, 2003; 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 placement of the house on the lot causes the need for the variance request.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a deck and play house, as shown on the plat prepared by Charles R. Johnson, dated March 11, 2003, submitted with this application and is not transferable

~ ~ ~ July 8, 2003, ALBERT LULUSHI, VC 2003-SU-064, continued from Page 604

to other land.

2. A Building Permit shall be obtained for the deck 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 July 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:30 A.M. FAI OLD CENTREVILLE LLC, A 2003-SU-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the shopping center on property located at Tax Map 54-4 ((1)) 87C has frontage on only one major thoroughfare and, therefore, only one freestanding sign may be erected in accordance with Zoning Ordinance provisions, and that there is no nonconforming right to allow two freestanding signs to be located on the property. Located at 13810 Braddock Rd. on approx. 15.89 ac. of land zoned C-6, C-8, HC and SC. Sully District. Tax Map 54-4 ((1)) 87C and 87F. (Def. from 6-10-03)

Robert Lawrence, Agent for Appellant, requested deferral of the application to September 30, 2003.

Mr. Ribble moved to defer the appeal application to September 30, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. NANCY & WILLIAM W. CAWOOD, VC 2003-DR-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.4 ft. from side lot line. Located at 9411 Vernon Dr. on approx. 22,101 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-4 ((17)) 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. William Cawood, 9411 Vernon Drive, Great Falls, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant requested approval to permit construction of a deck 5.4 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet; therefore, a variance of 6.6 feet was requested.

Mr. Cawood presented the variance request as outlined in the statement of justification submitted with the application. Mr. Cawood stated that the house was angled on a lot to face a pipestem driveway. He stated that when the house was sold to them by the contractor, it came with a 10 x 30-foot deck which they found to be smaller than what they required and therefore, they replaced it with a new deck. He stated that a permit was requested and then the request for the variance to follow through with the location of the deck since it was too close to the lot line. Mr. Cawood stated that the deck backed to common wooded area and was not

~ ~ ~ July 8, 2003, NANCY & WILLIAM W. CAWOOD, VC 2003-DR-073, continued from Page 605

visible from any of the houses. He asked for the Board's approval of the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2003-DR-073 as stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY & WILLIAM W. CAWOOD, VC 2003-DR-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.4 ft. from side lot line. Located at 9411 Vernon Dr. on approx. 22,101 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-4 ((17)) 13. 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 8, 2003; 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 request is fairly modest with only one corner of the deck requiring a variance.
4. The property is surrounded by common area on two sides and is heavily wooded.
5. The deck will not be seen by property owners to the east and south of the property.
6. The variance is needed because of the peculiar citing of the house on the lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

~ ~ ~ July 8, 2003, NANCY & WILLIAM W. CAWOOD, VC 2003-DR-073, continued from Page 606

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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 variance is approved for the location of a deck, as shown on the plat prepared by Richard J. Cronin IV, dated November 20, 2001, revised August 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.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 16, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RONALD CORRADINO, SP 2003-SU-015 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 9.3 ft. from side lot line. Located at 15477 Eagle Tavern La. on approx. 13,646 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (3) 7.

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. Ronald Corradino, 15477 Eagle Tavern Lane, Centreville, Virginia, replied that it was.

William Sherman, Staff Coordinator, presented the special permit request as contained in the staff report. He stated that the applicant requested construction of a screened porch on an existing deck 9.3 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20.0 feet; therefore, a reduction of 10.7 feet was requested; however, the addition met the R-2 District requirements on July 25, 1982, when the minimum side yard was 8.0 feet.

Mr. Corradino presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the deck was existing and would not protrude any further than it currently did.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve SP 2003-SU-015 as stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

RONALD CORRADINO, SP 2003-SU-015 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 9.3 ft. from side lot line. Located at 15477 Eagle Tavern La. on approx. 13,646 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (3) 7. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 8, 2003; 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 application was properly filed in accordance with all applicable requirements.
7. The request before the Board was very minimal.

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**.

1. This special permit is approved for the location of a screened porch, as shown on the plat prepared by Blaise Burry, dated March 24, 2003, revised April 22, 2003, 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. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. 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 July 16, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

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. (Def. from 10/1/02 1/14/03 and 4/1/03 per appl req.) (def for decision from 6/3/03)

Vice-Chairman Ribble noted that the applicant had requested withdrawal of the application.

Mr. Hammack moved to allow withdrawal of A 2002-HM-021. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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~ ~ ~ July 8, 2003, (Tape 1), Scheduled case of:

9:30 A.M. PAUL HORMANN ET AL AND DUANE HORMANN ET AL, A 2003-HM-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a commercial use (automotive windshield replacement/repair business and mobile lock repair service) and are allowing commercial vehicles to be parked on property located in the R-1 District in violation of Zoning Ordinance provisions. Located at 12345 Lawyers Rd. on approx. 2.03 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-4 ((1)) 26. (moved from 4/29/03 at appl req.) (def dec from 6/24/03)

William Shoup, Zoning Administrator, stated that the public hearing was held on June 24, 2003, and that the issue involved a Notice of Violation that Mr. Hormann was conducting a commercial business operation from residential property. He stated that the issue was whether or not he was actually conducting the business at the time of the Notice of Violation. Mr. Shoup stated that Mr. Hormann refused to allow County staff to come onto his property to verify whether he was in compliance or not. Mr. Shoup stated that Mr. Barnes Lawson told staff that Mr. Hormann would be representing himself at this hearing; however, he noted that Mr. Hormann was not present in the auditorium. Mr. Shoup asked the Board to take action to uphold the Zoning Administrator with regard to the Notice of Violation.

Mr. Hammack asked if there was documentation as to whether or not Mr. Lawson was representing the appellant in this case. Mr. Shoup was unsure and stated only that Mr. Lawson had informed him that Mr. Hormann would represent himself. Mr. Hammack stated that clarification was necessary prior to any action being taken.

Mr. Hammack moved to defer decision to July 15, 2003, at 9:30 a.m. Mr. Hammack asked staff to contact the appellant and inform him to attend the hearing in order to present comments to the Board and also to contact Mr. Barnes Lawson and ask that a letter be submitted to the Board indicating whether or not he represented Mr. Hormann in the application.

Ms. Gibb seconded the motion, which carried by a vote of 4-3. Chairman DiGiulian, Mr. Ribble, and Mr. Beard voted against the motion.

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~ ~ ~ July 8, 2003, (Tape 1), After Agenda Item:

Approval of September 24, 2002 Minutes

Mr. Pammel moved to approve the September 24, 2002 Minutes. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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--- July 8, 2003, (Tape 1), After Agenda Item:

Approval of July 1, 2003 Resolutions

Mr. Pammel moved to approve the July 1, 2003 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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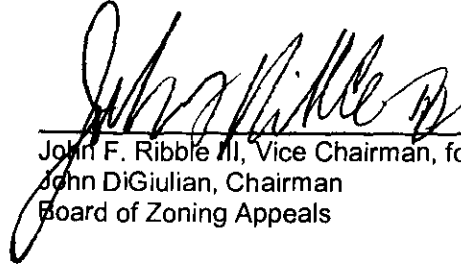
As there was no other business to come before the Board, the meeting was adjourned at 9:58 a.m.

Minutes by: Deborah A. Hedrick

Approved on: October 19, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble II, Vice Chairman, for  
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 15, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; V. Max Beard; 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.

~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. COL. & MRS. JONATHAN B. DODSON, VC 2003-SP-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 0.2 ft. from side lot line. Located at 6707 Kenmont Pl. on approx. 10,851 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (3) 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. Jonathan B. Dodson, 6707 Kenmont Place, Springfield, Virginia, replied that it was.

Kristen Shields, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 0.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet in the R-3 Zoning District; therefore, a variance of 11.8 feet was requested.

Col. Dodson presented the variance request as outlined in the statement of justification submitted with the application. He stated that the variance would not create any hardships. Col. Dodson said there was ample room between his and his neighbor's property to allow space for the addition. He stated that he was disabled and the variance would allow him to experience a more normal life by having easier access to the garage. Col. Dodson explained that the addition should be located where it was shown on the plat because of the topography of his lot. He said there was a 60 degree incline between his and his neighbors property. Col. Dodson said he had a letter from his neighbors granting an easement for the addition to be close to the property line. He explained that he had a traumatic brain injury as a result of Vietnam and a degenerative arthritis disease also caused by the war. Col. Dodson stated that he had a seventy percent disability rating. He stated that a retaining wall would be constructed to stop soil erosion from the hill.

Ms. Gibb asked Col. Dodson if he was widening the driveway. Col. Dodson stated that he was not. Ms. Gibb asked Col. Dodson if he had an easement agreement signed by his neighbor. Col. Dodson stated that they signed a letter and said they would grant a Deed of Easement if the Board required one.

Ms. Gibb asked the applicant if a copy of the easement was submitted. Col. Dodson stated that it was.

Mr. Hart asked Col. Dodson where the retaining wall was to be located. Col. Dodson explained that it would be located 4.0 feet to the right of the driveway. He said it would be partially on his property and partially on his neighbor's property.

Mr. Hart asked staff if the retaining wall should have been shown on the plat. Ms. Langdon stated that it did not require a variance.

Mr. Hart asked the applicant if he was changing the drainage. Col. Dodson said he was not.

Mr. Hart asked Col. Dodson if there was an overhang on the garage. He stated that there was not.

Mr. Hart asked the applicant if he had looked into an end to end garage. Col. Dodson stated that he had and it was determined that because of the trees and the topography of the lot they could not.

Mr. Hart noted that the easement was not official until recorded by the County.

Chairman DiGiulian stated that they had a letter in opposition from the Shuffelbergers and a letter of concern from the Goulds. He asked the applicant if he had seen the letters. Col. Dodson said he had seen the letter from the Shuffelbergers, but not the Goulds. He said that the Shuffelbergers were concerned about a precedent being set. Col. Dodson stated that they had closed in their carport which was approximately 4.0

~ ~ ~ July 15, 2003, COL. & MRS. JONATHAN B. DODSON, VC 2003-SP-078, continued from Page 611

feet from the property line. He said there were three houses in his cul-de-sac that had enclosed carports and garages.

Chairman DiGiulian asked the applicant if the Goulds' property was located on the side of the property where the garage was to be constructed. Col. Dodson stated that it was not.

Chairman DiGiulian called for speakers.

Ted Daniels, contractor for the Dodsons, came forward to speak in support of the variance. He explained that the only place on the lot for the addition was the proposed location as indicated on the plat. Mr. Daniels said the topography of the lot limited other areas to put the garage.

Mr. Beard asked Mr. Daniels if the garage could be made narrower. He stated that the garage was as narrow as it could be in order to fit two cars.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 2003-SP-078 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COL. & MRS. JONATHAN B. DODSON, VC 2003-SP-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 0.2 ft. from side lot line. Located at 6707 Kenmont Pl. on approx. 10,851 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (3) 23. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 15, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The variance did not satisfy the standards set forth in the Zoning Ordinance.
3. The proposed two car garage is a convenience and not a necessity.
4. There are concerns about the maintenance of the garage.
5. The accessibility to the back yard would be affected.

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

~ ~ ~ July 15, 2003, COL. & MRS. JONATHAN B. DODSON, VC 2003-SP-078, continued from Page 612

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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. Ms. Gibb moved to waive the 1-year waiting period for re-filing an application. 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 23, 2003.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN & MARGARET BUSH, VCA 99-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from rear lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with SP 2003-MV-018).

9:00 A.M. MARVIN & MARGARET BUSH, SP 2003-MV-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit patio and accessory structure to remain 0.2 ft. from side lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with VCA 99-V-084).

Jim Pan, Agent, came forward to request a deferral to July 22, 2003.

Mr. Pammel moved to defer VCA 99-V-084 and SP 2003-MV-018 to July 22, 2003, at 9:00 a.m. Mr. Hammack and Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. GRETCHEN L. LOWE, SP 2003-DR-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 10.0 ft. from side lot line. Located at 6619 Melrose Dr. on approx. 15,504 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((24)) 1A. (Concurrent with VC 2003-DR-069).

9:00 A.M. GRETCHEN L. LOWE, VC 2003-DR-069 Appl. under Sect(s). 18-401 of the Zoning

~ ~ ~ July 15, 2003, GRETCHEN L. LOWE, SP 2003-DR-016 and VC 2003-DR-069, continued from Page 613

Ordinance to permit construction of addition 13.0 ft. and eave 11.0 ft. from side lot line. Located at 6619 Melrose Dr. on approx. 15,504 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((24)) 1A. (Concurrent with SP 2003-DR-016).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gretchen Lowe, 6619 Melrose Drive, McLean, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction in minimum yard requirements based on an error in building location to permit a screened porch to remain 10.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet in the R-2 District; therefore, a reduction of 5.0 feet was requested. The applicant also requested a variance to permit construction of an addition 13.0 feet with an eave 11.0 feet from the side lot line. The Zoning Ordinance permits eaves to extend 3.0 feet into the minimum side yard; therefore, variances of 2.0 feet and 1.0 foot were required.

Ms. Lowe presented the variance request as outlined in the statement of justification submitted with the application. She explained that they planned on using an existing structure for the breakfast nook and if that was not possible they were going to stay in the original foot print of the structure. Ms. Lowe stated that the edge of the existing structure was 13.0 feet from the interior property line and the eave was 11.0 feet from the line. She said that the property was unusually narrow and the edge of the house was 15.0 feet from the interior property line. Ms. Lowe said that the current shed encroached on the 15.0 foot setback. She stated that the shed and existing side porch existed when the house was built in 1958. Ms. Lowe explained that the covenants in the deed at the time the house was built provided for a 10.0 foot setback. She said that the neighbors on the side of the proposed addition submitted letters in support of the applications. Ms. Lowe stated that the applications would not be detrimental to the neighborhood or create an unsafe condition. She said that it would be a hardship to remove the side porch.

Chairman DiGiulian noted that the plat showed the setback for the proposed addition to be 11.0 feet plus or minus and 12.0 feet plus or minus. Chairman DiGiulian asked what the dimensions would be. Ms. Lowe stated that the variance was for 11.0 feet.

Mr. Hart noted that the applications were advertised for 13.0 feet with an eave at 11.0 feet. Ms. Lowe said that was correct.

Mr. Pammel moved to approve SP 2003-DR-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

GRETCHEN L. LOWE, SP 2003-DR-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 10.0 ft. from side lot line. Located at 6619 Melrose Dr. on approx. 15,504 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((24)) 1A. (Concurrent with VC 2003-DR-069). 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 15, 2003; 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

~ ~ ~ July 15, 2003, GRETCHEN L. LOWE, SP 2003-DR-016 and VC 2003-DR-069, continued from Page 614

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 screened in porch, as shown on the plat prepared by Brian W. Smith, dated January 27, 2003, revised March 7, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned 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 23, 2003. 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 2003-DR-069 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GRETCHEN L. LOWE, VC 2003-DR-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. and eave 11.0 ft. from side lot line. Located at 6619 Melrose Dr. on approx. 15,504 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((24)) 1A. (Concurrent with SP 2003-

~ ~ ~ July 15, 2003, GRETCHEN L. LOWE, SP 2003-DR-016 and VC 2003-DR-069, continued from Page 615

DR-016). 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 15, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The variance meets the prescribed criteria set forth in the Zoning Ordinance.
3. The proposed addition will be built where the current shed is located.
4. The lot has an unusual configuration with the lot lines converging to the rear, creating 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 addition, as shown on the plat prepared by Brian W. Smith, dated January 27, 2003, revised March 7, 2003, submitted with this application and is not transferable to other land.



~ ~ ~ July 15, 2003, GRETCHEN L. LOWE, SP 2003-DR-016 and VC 2003-DR-069, continued from Page 616

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 23, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH DAVID EVANS AND TANYA LEE EVANS, VC 2003-MA-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 28.5 ft. from front lot line of a corner lot and 8.0 ft. and eave 6.5 ft. from side lot line. Located at 3295 Blue Heron Dr. on approx. 10,635 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((42)) 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. Joseph Evans, 3295 Blue Heron Drive, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of two additions. One addition was to be located 28.5 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 30.0 feet in the R-4 District; therefore, a variance of 1.5 feet was required. The second addition was to be located 8.0 feet with eaves 6.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 10.0 feet in the R-4 District and allows an extension of 3.0 feet per eave; therefore variances of 2.0 feet and 0.5 feet were required.

Mr. Evans presented the variance request as outlined in the statement of justification submitted with the application. He explained that they had lived at the residence since 1975 and they were the original owners of the home. He said that the existing single car garage was 14.0 feet wide and 6.0 to 7.0 additional feet were needed for a two car garage. Mr. Evans said they were requesting 2.0 feet which would be an encroachment at the front corner of the property because of the way the house was situated on the property. He explained that there was a 10.0 foot utility easement along the side yard and there would be no encroachment into the easement. Mr. Evans noted that the curvature of the street caused the lot to be narrower toward the front and the addition would encroach between 1.0 and 1.5 feet. He stated that the 1.5 foot overhang would only be a 1.5 inch overhang. Mr. Evans said that the house would be re-sided when the construction was finished so the additions would be in harmony with the rest of the house. He said he had a petition signed by his neighbors in support of the variance.

Gerald Rose, 3297 Blue Heron Drive, came forward to speak in support of the application. He explained that the neighborhood had been kept in pristine condition with owners who had improved their homes.

Paul Hollace, no address given, came forward to speak in support of the application. He explained that, in the past, variances had been granted in the neighborhood for additions. Mr. Hollace said he hoped the Board would support the variance.

Mr. Ribble moved to approve VC 2003-MA-071 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOSEPH DAVID EVANS AND TANYA LEE EVANS, VC 2003-MA-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 28.5 ft. from front lot line of a corner lot and 8.0 ft. and eave 6.5 ft. from side lot line. Located at 3295 Blue Heron Dr. on approx. 10,635 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((42)) 3. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 15, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant has met the nine standards for a variance.
3. The applicant's home is on a corner lot with a double front yard.
4. The house is situated at an angle 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.

~ ~ ~ July 15, 2003, JOSEPH DAVID EVANS AND TANYA LEE EVANS, VC 2003-MA-071, continued from Page 618

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and a garage addition, as shown on the plat prepared by George M. O'Quinn, dated August 24, 2002, revised through April 24, 2003, 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. 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 23, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. PAUL F. AND JOHAN H. MORRISON, VC 2003-MV-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.75 ft., bay windows 7.75 ft. and eave 9.25 ft. from side lot line. Located at 7945 Bolling Dr. on approx. 6,250 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 163.

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 Riggin, Agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 9.75 feet from the side lot line. The Zoning Ordinance requires minimum side yards of 15.0 feet in the R-2 District; therefore, a variance of 5.25 feet was required. The applicant also sought approval for the construction to include two bay windows 7.75 feet and an eave 9.25 feet from a side lot line. The Zoning Ordinance permits bay windows and eaves to extend 3.0 feet into minimum required yards; therefore, variances of 4.25 and 2.75 feet were required.

James Riggin presented the variance request as outlined in the statement of justification submitted with the application. He explained that he was seeking the variance because the existing property was narrow. Mr. Riggin stated that the property was planned in the 1930's before the Zoning Ordinance was in effect. He said that by right the Zoning Ordinance gave him 15.0 feet on each side which would allow a 20.0 foot wide home. Mr. Riggin said that the property included two utility easements, one on the right side which is sanitary sewer, which only allowed a 14.0 foot area of buildable property. He stated that the variance was similarly approved by the Board in 1997 but was not initiated by the previous owners.

Ms. Gibb asked the applicant why the previous owners did not build. Mr. Riggin stated that he did not know.

Ms. Gibb asked the applicant if he was the contract purchaser of the property. Mr. Riggin stated that he was.

Ms. Gibb asked the applicant if he had seen the letter from the Hillers. He stated that he had not.

Mr. Riggin asked to read the letter.

~ ~ ~ July 15, 2003, PAUL F. AND JOHAN H. MORRISON, VC 2003-MV-081, continued from Page 619

Ms. Gibb noted that the letter was extensive in reference to drainage problems. Ms. Gibb stated that the Hillers objected to building on the lot because of the drainage.

Mr. Riggan noted that he had a geotechnical engineer and a survey done that stated there were problem soils but it was not insurmountable. He said that the storm drain on the property had taken care of the drainage problems. Mr. Riggan said that he had checked the property several times during rainstorms and there were no problems that he could see. He noted that the letter from the Hillers was similar to a letter received in reference to the variance granted in 1997.

Mr. Hart asked the applicant if the house was on the lower side of the lot closer to the drains. Mr. Riggan stated that it was.

Mr. Hart asked the applicant why the house was not further toward the middle of the lot. Mr. Riggan explained that there was a 10.0 foot sanitary sewer easement on the right side of the property. He stated that the engineer said the foundation walls had to be a certain distance from the sanitary sewer line.

Mr. Hart asked staff if the conclusion drawn by the geotechnical engineer was correct. Ms. Langdon stated that they were not aware of the restriction and did not know.

Mr. Hart asked the applicant if the previous application was the same as the current application. Mr. Riggan stated that there was one bay window on the previous application. He said that one of the previous objections was that the house was long and so they added outcroppings to break up the side walls.

Mr. Hart asked the applicant if there was a garage. Mr. Riggan stated that there was not.

Mr. Hart asked the applicant if the extent of the driveway was what showed on the plat. Mr. Riggan stated that it was.

Mr. Hart asked the applicant how the new driveway was different from the current one. Mr. Riggan stated that the driveway shown on the plat was the neighbors.

Mr. Ribble noted that he had made the motion to grant the variance in 1997 and the applicant had stated that the dwelling had to be 15.0 feet from the sanitary sewer trunk line.

Chairman DiGiulian called for speakers.

Rachel Hiller, no address given, came forward to speak in opposition of the variance application. She stated that she lived next door to the lot. Ms. Hiller explained that when the previous variance was granted she had just moved into her home. She said that she attended the previous hearing and was in opposition of the variance. Ms. Hiller stated that she was in opposition to the size, aesthetics, and location of the house not being compatible with the neighborhood. She explained that she had family that had lived in the house from 1975 through 1985 and there was a stream running through the lot at that time. Ms. Hiller stated that when the County came to remedy the problem, they filled in the stream and installed storm drains on the opposite side of the lot. She said that the stream continued to run through the lot and collected in her yard and her neighbors. She noted that there was a mosquito problem because of the water.

Ms. Gibb asked Ms. Hiller to show where the stream flowed on the lot.

Mr. Pammel asked Ms. Hiller if she lived on lot 162. Ms. Hiller stated that she did.

Mr. Pammel noted that from the pictures it looked like there was a developing wetland on the site. He asked staff if there were restrictions on building on a wetland. Ms. Langdon stated that she did not know what the restrictions would be. She stated that Department of Public Works and Environmental Services would have to look at the grading plan.

Phillip Dearborn, 1137 Greenway Road, came forward to speak in opposition of the variance. He explained that there was serious storm water and flooding problems on his lot and his neighbor's lot. Mr. Dearborn stated that the condition would be made worse by constructing anything on the lot. Mr. Dearborn said that there was natural drainage of storm water that flowed between the rear of the lots on Bowling Road and the

~ ~ ~ July 15, 2003, PAUL F. AND JOHAN H. MORRISON, VC 2003-MV-081, continued from Page 620

back of the lots on Greenway Road. He stated that when it rained water was supposed to flow through the Leibermans' lot through his back yard, through the Betts' backyard, into the Morrison's yard, and through the back of the Morrison's yard to the storm sewer. Mr. Dearborn explained that when it rained the water flowed through his back yard and into the Morrison's yard and started ponding. He stated that the water would flood into his yard. Mr. Dearborn submitted pictures of the ponding. He explained that he contacted the Deputy Director of Maintenance and Storm Water Management, Department of Public Works and Environmental Services, to see if the County could remedy the problem. Mr. Dearborn said that the director saw two problems on the site, the storm sewer on the Morrison's lot was built twelve inches too high, and the grading on the Morrison's lot sloped up towards the storm sewer. He stated that the County submitted a letter to the Morrison's requesting permission to lower the storm sewer and do minor grading. Mr. Dearborn said that construction on the property would worsen the situation. He noted that the natural flow of the water was from the southeast corner of the property to the storm sewer located in the back left corner of the property. Mr. Dearborn explained that in order to build on the lot they would have to backfill the lot to prevent flooding. He said that the construction would be directly in the path of the natural flow of the water. Mr. Dearborn stated that the variance would cause a detriment to his property.

Jim Pravel, no address given, came forward to speak in opposition of the variance. He explained that constructing the house would divert the water from the subject lot to the surrounding lots. Mr. Pravel said the proposed house would not be in harmony with the rest of the neighborhood.

Mr. Rigglin stated in his rebuttal that he had a grading plan done which addressed some of the drainage issues. He said there were other homes in the neighborhood that were two-story and had been built on a single lot.

Ms. Gibb moved to defer VC 2003-MV-081 to September 23, 2003. She requested the applicants bring information from their engineer regarding the grading plan and the lowering of the storm sewer. Mr. Pammel seconded the motion.

Mr. Pammel said he wanted staff to address the wetlands issue and provide a tabulation of the number of houses that were built in single lots.

Mr. Hart said he wanted more information regarding the storm water easement to the left of the lot, exactly where the easement was located, and the purpose of the drains.

Mr. Hammack said he wanted to see the issue addressed of the aboveground building of bay windows encroaching on the easement.

Chairman DiGiulian called for the vote. The motion carried by a vote of 7-0.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN PHILIPPS, VC 2003-SU-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.65 ft. and eave 4.34 ft. from side lot line. Located at 3213 Allness La. on approx. 14,005 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 34-2 ((2)) 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. John Phillips, 3213 Allness Lane, Herndon, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a detached garage 5.65 feet with eave 4.34 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet in the R-3 District under the cluster provision and permits an extension of 3.0 feet for eaves; therefore, variances of 2.35 and 0.66 feet were required.

Mr. Phillips presented the variance request as outlined in the statement of justification submitted with the

~ ~ ~ July 15, 2003, JOHN PHILIPPS, VC 2003-SU-077, continued from Page 621

application. He noted that the property was angled which forced them to locate the garage in the rear of the property. Mr. Phillips stated that the east side of the property was above grade. He explained that the current driveway extended to the back of the house and when it rained the water pooled on the driveway. Mr. Phillips said that the garage would allow them to install drain tiles and a drain in front of the garage. He said that if the garage was moved to the side of the house they would still be impeding on the side yard setback and his children would be closer to the street when playing on the driveway.

Mr. Pammel asked Mr. Phillips if he was proposing to add two additional garage spaces, for a total of four. He stated they were adding the proposed garage and converting the existing garage into living space.

Mr. Hammack asked Mr. Phillips why the garage could not be moved forward to prevent encroachment on the rear or side setback lines. He stated that the backyard was below grade and he did not want to build on the flat part of the driveway where his children played.

Mr. Hart asked the applicant if the thirty feet across was for two cars or three cars. Mr. Phillips stated it was for two cars.

Mr. Hart asked the applicant why the garage needed to be 30.0 feet wide. Mr. Phillips explained that it was for storage of yard equipment.

Mr. Hart asked Mr. Phillips if the garage had a second level. He said that it would have attic space.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-SU-077 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN PHILIPPS, VC 2003-SU-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.65 ft. and eave 4.34 ft. from side lot line. Located at 3213 Allness La. on approx. 14,005 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 34-2 ((2)) 9. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 15, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or

~ ~ ~ July 15, 2003, JOHN PHILIPPS, VC 2003-SU-077, continued from Page 622

- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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, as shown on the plat prepared by David Hangen, dated February 14, 2003, revised May 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 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 5-2. Mr. Pammel 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 July 23, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BALMORAL ASSOCIATES, L.L.C., VC 2003-SP-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit individual sewage disposal system on a lot other than the lot of the principal use served by the system. Located at 13701 Balmoral Greens Ave. and 7501 Detwiller Dr. on approx. 1.68 ac. of land zoned R-C and WS. Springfield District. Tax Map 74-4 ((3)) 40 and pt. 53.

~ ~ ~ July 15, 2003, BALMORAL ASSOCIATES, L.L.C., VC 2003-SP-074 and VC 2003-SP-075, continued from Page 623

9:00 A.M. BALMORAL ASSOCIATES, L.L.C., VC 2003-SP-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit individual sewage disposal system on a lot other than the lot of the principal use served by the system. Located at 13700 Balmoral Greens Ave. and 7501 Detwiller Dr. on approx. 1.91 ac. of land zoned R-C and WS. Springfield District. Tax Map 74-4 ((3)) 167 and pt. 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. Henry Brandenstein, Agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit individual sewage disposal systems to be located on lots other than the lot of the principal uses served by the systems. The provisions of Sect. 2-503 of the Zoning Ordinance requires that septic fields and waste disposal systems be located on the same lot as the dwelling that they serve. The variance would allow Lots 40 and 167 to be served by septic systems located on two outlots that would be created by the subdivision of the existing lot 53. Lot 40 combined with the proposed outlot on the existing Lot 53, which is described as Outlot 40A would be a total of 1.68 acres for VC 2003-SP-074. The existing Lot 167 combined with the outlot described on the plat is Lot 167A and would be a total of 1.91 acres for variance VC 2003-SP-075. A variance application must satisfy the provisions of Sect. 18-404, Required Standards for Variances. It is noted that the provisions require finding that the application satisfy all nine requirements. Standard 4 states that the strict application of the Ordinance would produce an undue hardship. As indicated in the memorandum provided by the Health Department, and included in the staff report, the reevaluation of the subject properties septic fields was the result of the failure of a similar septic system in the vicinity. The subsequent investigation of the properties revealed that the applicant's soil consultant had not accurately represented the soil conditions of the subject properties. The grading activity that occurred on Lot 167 may have precluded the location of a septic field in the area where the grading took place and may have resulted in the failure of the site's minimum criteria to meet the septic field requirements. The applicant and the Health Department were aware of the volatility of the soils in the area as described in the staff report for the original rezoning of the property. A proffer was included in the rezoning of the property and was subsequently carried forward in a proffer condition amendment that precluded subdivision of outlots for the purpose of providing septic fields. The applicant offered a proffer to keep all of the proposed dwelling units on single lots with their septic fields. Given the information provided to the applicant at the time of the rezoning, the applicant should have anticipated a potential for fewer lots than what was shown on the subdivision plan. Staff could not conclude that undue hardship would result absent the granting of the variance. Irrespective of the requested variance, the septic field had been approved for Lot 53, and the Zoning Ordinance does not guarantee maximum use of ones property when the minimum requirements are not met. Standard 8 states that the character of the Zoning District will not be changed by the granting of the variance. In staff's view approval of the requested variances would significantly affect the character of the Zoning District by setting precedence for the location of dwellings and corresponding septic fields on separate lots. The proliferation of this type of development could result in maintenance and contamination problems in the RC District. Standard 9 states that the variance will be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to public interest. The proposed development did not meet the goals and objectives of the Comprehensive Plan with respect to the preservation of and protection of the Occoquan Watershed. Staff believed approval of these requests could set an undesirable precedence particularly in the Occoquan Basin and for other environmentally sensitive regions of the County.

Mr. Pammel asked Ms. Stanfield if there were lots other than 167 and 40 that failed the perk test. She replied that there were a total of twelve lots that were tested and the two proposed lots failed.

Mr. Pammel asked Ms. Stanfield if the applicant submitted any engineering plans that showed how they proposed to get the affluent from the two lots uphill to the proposed septic fields on Lot 167A. Ms. Stanfield said all that was provided was the plat and the information that was provided in the staff report.

Mr. Hart asked staff if the Board had ever approved a variance for an offsite septic field. Ms. Langdon stated that this was the first application that they were aware of.

Mr. Hart asked staff who the soil consultant was who provided inaccurate information. Ms. Stanfield said that he would have to ask the applicant; she was not aware of who the soil consultant was.



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Mr. Hart asked staff, if the variances were denied, could a house still be built on Lot 53. Ms. Stanfield stated that it could.

Mr. Hart asked staff if the variances were denied, could the other two lots be used for accessory uses. Ms. Stanfield said if they were combined with a building lot they could.

Mr. Hart asked staff if an adjacent owner purchased one of the lots, could they put something other than a house on the lot. Ms. Stanfield stated they could.

Mr. Hart asked staff if there was a minimum lot size needed to have a septic field. Ms. Stanfield said she was unaware of any requirement.

Mr. Hart noted that it looked like they were proffering to a generalized development plan dated December 18, 1996. He asked staff why they did not need another PCA to change lot lines on the GDP or change things that were in the proffers. Ms. Stanfield said they may be required to have a PCA in addition to the variance.

Mr. Hart asked staff if it had been determined that the applicant be required to have a PCA. Ms. Stanfield stated that it had not.

Mr. Hart noted that the Board of Zoning Appeals might not have the last word if a PCA was needed. Ms. Stanfield said that was correct.

Mr. Hart asked staff if a building permit was issued for Lot 40 or Lot 167. Ms. Stanfield said there had not been a building permit issued for either lot.

Mr. Hart noted that on one of the proposed lots, grading and traffic may have adversely affected the conditions of the soil. He asked staff which lot had a grading problem. Ms. Stanfield stated that there was a grading problem on the cleared lot.

Ms. Stanfield noted the Health Department's memorandum implied that there were clearing and grading problems associated with the other lot.

Mr. Hart asked staff if there was a grading plan for the lot that was cleared. Ms. Stanfield said she was not sure if a grading plan was issued.

Mr. Hart asked staff if the applicant had to get subdivision approval in the 1990s. Ms. Stanfield said they did.

Mr. Hart asked staff if the applicant had proposed the configuration of the lots. Ms. Stanfield replied that they had.

Mr. Hart asked staff if any amendments about sewage disposal adopted by the Board of Supervisors last week effected the variance. Ms. Stanfield said she was not aware of any connection to what the Board did last week. She noted that the Health Department approved the system that the applicant had requested for the development.

Mr. Hart noted there had been a conflict between the Staff's memos and the applicant's memos pertaining to one of the proposed lots being approved for a two bedroom house. He asked staff if the conflict had been resolved. Ms. Stanfield stated that it had. She explained that the Health Department said it had not been approved for a two bedroom house.

Mr. Hart asked staff if the Health Department relied on the engineering data submitted by the applicant when they approved the plan in the beginning. Ms. Stanfield stated they had.

Mr. Brandenstein presented the variance request as outlined in the statement of justification submitted with the application. He submitted letters to the Board in support of the variance. Mr. Brandenstein said they had acquired the property in 1996. He stated that it consisted of 884 acres located in the southwestern portion of Fairfax County. Mr. Brandenstein said the land would eventually be divided into 182 single family lots. He said all of the lots were to be served by private sewage disposal systems. He stated that the density for the

project was extremely low. He said that the applicant would ultimately donate 405 acres of the property to the Fairfax County Board of Supervisors which would be conveyed to the Park Authority. Mr. Brandenstein said all of the 182 lots that were originally approved had approved septic drain field sites located on them. He said that if they knew of the problem when the lots were originally laid out, they could have solved the problem. Mr. Brandenstein stated that after testing, because of one failed septic system, it was determined that 34 lots in this section would be buildable, subject to potential changes or modifications involved with the drain fields. He explained that the remaining three lots would not perk. Mr. Brandenstein said the soil consultant went back to the site for more testing and determined, along with the Health Department, that Lots 40 and 167 would be buildable if a variance was granted, as long as the septic field was located on the same lot as the principal dwelling. He explained that if they put Pure Flow Systems on Lot 40 and Lot 167 there would be an operation and maintenance agreement in accordance with the Fairfax County Code. Mr. Brandenstein said the code stated if you had a failed septic system you could place the septic system on another lot if it was required to serve the residence. He said that they had a system that the County decided, in advance of the installation, would fail. Mr. Brandenstein said the County decided that the original perk tests that were performed were unsatisfactory and needed to be retested. He said the original tests had a flow rate of 120 minutes per inch. Mr. Brandenstein said the principle purpose of code Sect. 2-503.2 was to prohibit and limit the opportunities for problems with regard to septic systems in the future. He said if the septic system and the house were on different lots with different owners, there was potential for conflict of interest. Mr. Brandenstein said that if sometime the owner with the septic field in the back yard would want to expand his home, the existence of the septic field would limit the owner's right to build on his property. He stated that if there was ever a problem with the septic field it would also cause a problem. Mr. Brandenstein stated that he felt this was the reason Section 2-503.2 of the code was designed. He explained that there were lots in Balmoral that had been approved by the County Health Department where the drain lines ran in excess of 1,800 feet. Mr. Brandenstein stated that what they wanted to do was no greater than 800 linear feet from the principal residence. He said that when they met with people from the subdivision they were told they needed to submit a subdivision request and did not need a proffer condition amendment preliminarily. Mr. Brandenstein said when they got to the point of submitting the subdivision plat, if it was not approved, they would have to do that. He noted that the houses and the septic tanks would be located on the same lots. Mr. Brandenstein said it was the drain fields and the drain lines that would be located on the proposed outlots. He stated that the Virginia Department of Transportation had no problem with the proposed conduit that ran under the roads. Mr. Brandenstein noted that sewer lines and utility lines ran under streets. He said that the staff reports pointed out four of the standards associated with the applications that they had failed to meet. Mr. Brandenstein explained they had met the other four standards. He said it would be a hardship not to maximize the value of the properties. Mr. Brandenstein said the lots were intended to be for single family dwellings. He said with regard to conditions eight and nine that dealt with precedence, precedential value would be narrow. He said that there were no problems with the proposed development conditions with exception to condition number three. Mr. Brandenstein noted that in order to build on Lot 53, it would need to be cleared. He stated that the two proposed lots had either been partially cleared or completely cleared. Mr. Brandenstein said the Health Department did not approve a two bedroom house on Lot 40. He said a two bedroom house would not be in harmony with the neighborhood.

Mr. Pammel asked Mr. Brandenstein if the purchaser of Lot 167 would also acquire Outlot 167A and the purchaser of Lot 40 would acquire Outlot 40A. Mr. Brandenstein said that was correct.

Mr. Hart asked Mr. Brandenstein why his client was not responsible for mistakes made by their soil consultant. Mr. Brandenstein said the soil consultant submitted the soils tests to the Health Department which judged them by the then current standards which permitted 120 minutes per inch to approve the fields. He said after the fields had the first failure, Health said the standard could not apply to the soil because of certain conditions. Mr. Brandenstein said the soil samples that were tested were not as representative as they should have been.

Mr. Hart asked Mr. Brandenstein if his client had accepted a risk that some lots would not perk. Mr. Brandenstein said that by the extent they relied on the soil consultant and the Health Department they made a mistake.

Mr. Hart asked Mr. Brandenstein who the soil consultant was. Mr. Brandenstein stated that it was GMTI.

Mr. Hart noted that there were grading problems subsequent to the approval that affected the ability of either

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lot. Mr. Hart asked Mr. Brandenstein if the grading was attributable to his client. Mr. Brandenstein said they had not done any extraordinary grading to any of the lots.

Mr. Hart asked Mr. Brandenstein if he had any information that said nothing in the grading would contradict what the Health Department said. Mr. Brandenstein stated he did not.

Mr. Hart noted that on the lot to the North there appeared to be a stream going through the middle of the lot. Mr. Hart asked Mr. Brandenstein what happened to the stream. Mr. Brandenstein stated Mark Riddle, Balmoral Associates, was present and could speak to the issue.

Mr. Riddle said that the portion of Lot 167, where the creek ran, was still not cleared.

Mr. Hart asked what part of the lot was cleared for the home to be built. Mr. Riddle said that the front portion of the lot had been cleared. He said the drain field and the house location had been cleared.

Mr. Hart noted that on the plat, it looked as if the stream would run through the middle of the house.

Mr. Hart asked Mr. Riddle if the builder's contractor had cleared the lot. Mr. Riddle said that was correct.

Mr. Hart asked Mr. Brandenstein if the lot had been sold but did not change hands. Mr. Brandenstein stated that it was under contract but had not been conveyed.

Mr. Hart asked Mr. Brandenstein if Balmoral L.L.C. had always been the owner of the property. Mr. Brandenstein said they had.

Mr. Hart asked Mr. Riddle who had done the grading on Lot 40. Mr. Riddle stated the grading was done by NV Homes. He said they exercised standard clearing practices.

Mr. Hart asked Mr. Riddle what had happened with the lot in Section 2. Mr. Riddle said the lot failed and required repair.

Mr. Hart asked Mr. Riddle which lot had failed. Mr. Riddle said Lot 7 in Section 2A had failed.

Mr. Hart noted that in looking at the topography of the lots in question, the wastewater would be going uphill 20.0 to 25.0 feet. He asked Mr. Riddle if there was a pump that would move the water and where the machinery would be located. Mr. Riddle said the machinery would be located on the primary lot.

Mr. Hart asked Mr. Brandenstein what would be visible. Mr. Brandenstein explained there would be a filtration module that was green in color that would come out of the ground three to four inches.

Mr. Hart asked Mr. Brandenstein if the pumping system operated by electricity. Mr. Brandenstein said that the pump would be electrical.

Mr. Hart asked Mr. Brandenstein what would happen if there was a loss of electricity. Mr. Brandenstein said there would be an alarm and most homeowners would install an emergency generator.

Mr. Hart asked Mr. Riddle what type of landscaping they would be doing. Mr. Riddle explained that they would landscape as much as possible on Balmoral Greens Avenue and on the rear of Lot 54.

Mr. Brandenstein explained that the intention was to keep Lot 53 as wooded as possible. He said there was an agreement with the Homeowner's Association to screen along Balmoral Greens Drive.

Mr. Hart asked Mr. Brandenstein if there was a drawing that showed the limits of clearing and grading. Mr. Brandenstein said there was not. He said that it was a proposed development condition. Mr. Brandenstein stated that it was their anticipation that the only areas that needed to be cleared were the areas where the drainfields were located.

Ms. Gibb asked Mr. Riddle how many failures there had been. Mr. Riddle said he thought there was one.

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Ms. Gibb asked Mr. Riddle if all the new systems would be Pure Flow. Mr. Riddle said that was correct for Lots 40 and 167.

Ms. Gibb asked how long a regular septic system should last. Mike Lind came forward and stated that he was a certified professional soil scientist and an authorized onsite soil evaluator with Soils and Environmental Services. He said that it would depend on the size of the family and how often the tanks were pumped. He said in general a septic field should last 25 to 30 years.

Ms. Gibb noted that the report stated the Pure Flow System would only last 20 years. Mr. Lind said it was misrepresented in the report. He said the Pete Treatment Modules were to last 20 years but that did not include the drainfields.

Ms. Gibb asked staff if this was a residential use for a property if you only had a septic field. Ms. Stanfield explained that if the two lots represented one use, it would still be a residential use. Ms. Stanfield said you would have the outlot for the septic field and the dwelling on the other lot. She stated the outlot would be to serve the dwelling which would make it a residential use.

Mr. Hammack asked Mr. Brandenstein how conduits would be maintained under the street. Mr. Brandenstein stated there was a letter from Virginia Department of Transportation that indicated they had been advised that conduit was already installed under the street and there was not a problem. He explained that the conduit was a sleeve that would contain the drain lines. Mr. Brandenstein said if there was a problem with a drain line you would be able to dig up the line on each side of the road to replace it. He said you would not have to disturb the road.

Mr. Hammack asked Mr. Brandenstein if they would need an easement. Mr. Riddle responded by saying there would be a C-7 quitclaim easement, which was a standard Virginia Department of Transportation easement that notified the department of the location of the easement. Mr. Riddle said the homeowner would still have maintenance responsibilities if the line broke.

Mr. Beard asked Mr. Brandenstein to clarify if the lines ran in excess of a quarter mile from the septic tank to the drainfield. Mr. Brandenstein presented documents to Mr. Beard and pointed out the locations.

Chairman DiGiulian called for speakers.

Juan Cardenas, counsel to Balmoral Greens Homeowner's Association, came forward to speak in support of the application. He said the Association voted to support the application because the developer kept the community fully aware of its plans and dealt with concerns expressed by residents. Mr. Cardenas stated that the majority of the comments received in relation to the application were favorable.

Mr. Hart made a disclosure that he was currently working in a case involving Mr. Cardenas. He said he did not think it would affect his ability to participate in the case.

Hal Heffner, Lot 166, came forward to speak in support of the application. He stated he had a letter signed by all the owners on Clifton Quarry Drive, where Lot 167 was located, in support of the application. He said the application allowed the developer to sell two of the three lots and build houses on them, which was the original intention for the parcels. Mr. Heffner said when they had purchased the homes it was with the pretense that every lot would have a home built on it. He said in 1998, Lot 167 was cleared when the first group of houses were built, but it would not perk. Mr. Heffner stated the lot had remained an unsightly mess. He said that nothing was growing on the lot except weeds and tall grass. Mr. Heffner explained that the vacant lots affected the value of their homes. He said the building of the two homes would finish the corner in a manner the lots were intended for. Mr. Heffner stated that the application would give the homeowner's the finished neighborhood they were promised. He noted that everyone on the street of Clifton Quarry Drive signed the letter, as well as two neighbors directly across from Lot 53. Mr. Heffner said that having lived next to Lot 167 he had to clear and mow the lot. He said it was unsightly.

William VanBleet, Lot 52, came forward to speak in support of the application. He noted that his lot was most impacted by the septic fields. Mr. VanBleet said that Pure Flow Systems had been successfully installed in Balmoral Greens in the past. He said that on his lot, his septic pump had to pump almost as far

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as on the proposed application. Mr. VanBleet said the application minimized further disruption to the neighborhood and maintained the overall aesthetics. He explained that his support was contingent on two requests concerning maintenance and clearing plans. Mr. VanBleet noted the area around the septic fields would be cleared and an easement along the pipes would be put in place.

Steve Guttonplan, Lot 44, came forward to speak in opposition of the application. He stated he had a letter of concern from eight neighbors that lived in the vicinity of the three proposed lots. Mr. Guttonplan said he was concerned with having two Pure Flow Systems adjacent to each other. He stated he did not know how the property owners would know if maintenance was required on the systems. Mr. Guttonplan asked how it would be known which system had failed. He said there were concerns of the pipelines being owned by two different homeowners. Mr. Guttonplan stated that they wondered if there were other potential uses for Lots 40A and 167A. He noted concerns of potential owners and what restrictions there were for the use of their lots. Mr. Guttonplan said the two pipes that would lead to the Pure Flow Systems were proposed to go up the center of the wooded lot, which would require significant clearing.

Ms. Gibb asked staff if the owners of the proposed lots would be able to clear the lots and put in swimming pools. Ms. Stanfield said barring the conditions which would establish clearing and grading there would be nothing to preclude them from erecting a shed or clearing further.

Amy Waldruf, Lot 54, came forward to speak in opposition of the application. She said the applicant had not proven that the application would not result in substantial detriment to the adjacent property owners. Ms. Waldruf stated that approval of the variance would cause her property value to drop. She said the applicant's request transformed the wooded area behind her home into a sewage treatment site. Ms. Waldruf said the trees would be gone and the view into the neighborhood would be an eyesore. She submitted photographs of the Pure Flow System tanks which were four by six feet in size. Ms. Waldruf said each home would require five tanks on their properties. She explained that the neighborhood contained homes that valued in excess of one million dollars and a sewage treatment site was unacceptable. Ms. Waldruf asked what would happen if a septic system failed. She asked if the road could have to be excavated if there was a problem with one of the systems. Ms. Waldruf asked if a failure of the system could be detrimental to the Occoquan Watershed. She stated that the proposed location of the canisters was behind a deaf child at play sign. Ms. Waldruf said that if a car swerved 10.0 feet off the main drive in the neighborhood and hit a canister, it could create an environmental hazard.

Mathew Hall, 7504 Detwiler Drive, came forward to speak in opposition of the application. He stated that approval of the variance would set precedence. Mr. Hall said approval of the application had potential for boundary and responsibility disputes that would require involvement of the Homeowner's Association and Fairfax County. He noted that it would be difficult to identify responsible parties in the event of a system failure on the third lot. Mr. Hall said that in the event of a failure the alternative systems are unknown. He said he had environmental concerns of having two septic systems on one lot.

Mr. Hammack asked staff what the definition of an outlot was. Ms. Stanfield said there was not a definition of an outlot in the Zoning Ordinance.

Mr. Hammack asked staff why they allowed the creation of outlots in subdivisions if there was no definition. Ms. Stanfield said creation of outlots was due to the tract of land that had been subdivided no longer meeting Zoning Ordinance requirements.

Mr. Leigh, representative of David and Joan Lilic, came forward to speak in opposition of the application. He stated that the application was unjustified and premature. He said the properties were proffered and the development should be in conformity. He said when you try to combine two septic systems on one lot you had a sewage treatment facility. He explained that if this was a sewage treatment facility pursuant to Sect. 9-204, it violated the zoning, the restrictive covenants, the proffers, and would be required to be in an I-6 heavy industrial district. He stated that the applicant did not meet the hardship requirement of Sect. 18-404.4 because the hardship was self imposed. He said the Health Department had concluded the hardship was self imposed due to grading activities. He stated that there was a specific section of the code that said you should not put pavement on top of septic systems or components. He noted that with the previously failed septic systems, there was concern about the Occoquan water shed.

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Ms. Gibb asked Mr. Leigh if there was something in the declaration about the use of lots. He said there were several different references.

Mr. Hammack said he felt Mr. Leigh was stretching the point of the sewage treatment plant. Mr. Leigh said that there were more than two sewage systems on one lot. He said that precedence could be set.

Mr. Hart made a disclosure that he had arbitration with Delegate Mims, Mr. Leigh's partner. He said he did not believe it would affect his ability to participate in the matter.

Mr. Hart noted that in a letter from Mr. Vermilyea, the fill pad for the house encroached on the natural swale to the northeast of the SDS Area and had probably altered surface drainage patterns and damaged the SDS area. Mr. Hart asked if this had been appealed. Mr. Leigh stated that the Health Department determined that they would not reverse their position.

Mr. Hammack made a disclosure that he had activities associated with Mr. Leigh's law firm some time ago.

Mr. Brandenstein stated in his rebuttal that there was not an appeal filed in connection with the determination of the Department of Health, of August 12, 1998. He said that after the determination, they had met with the Health Department to try and resolve the problem. Mr. Brandenstein stated that the letter said compaction from construction was what caused the problem. He said that with the Health Department not being at the site during construction it was hard to understand the factual basis of their statement. Mr. Brandenstein said there was a grading plan for the site and they were operating in accordance with the permits that had been issued. He said that septic fields located 1800 feet from the primary residence did not create any greater risk than the system they were proposing to use. Mr. Brandenstein stated they had a letter from a prospective buyer of one of the lots in support of the application. He said that most of the comments from the owner of Lot 41 dealt directly with science. Mr. Brandenstein said if a septic system failed it was a problem for the homeowner and a problem for the County. He said the County had made a decision that the Pure Flow System had a suitable risk of success. Mr. Brandenstein stated that the applicant had no problem with a development condition that restricted the outlots to the septic fields and activities necessary to maintain the septic fields. He said Lot 53 was buildable and would have some kind of septic system whether or not the application was approved. Mr. Brandenstein explained that they intended to do everything possible to maintain the vegetation on the proposed lots, except where the fields were located. He stated that the level of contamination that would reach the outlots was limited. Mr. Brandenstein explained there were two sleeves that ran from Lot 40 to Lot 53. He stated that there was one sleeve that ran from Lot 167 to Lot 40 which would cross the easement on Lot 40. Mr. Brandenstein said Lot 40 had two separate lines. He said there would be separate easements for each of the septic systems. Mr. Brandenstein said there would be no dispute as to who was responsible for the maintenance of the line under the road.

Mr. Pammel noted that several years ago he had a meeting at the Northern Virginia Regional Commission where they had a presentation from the Virginia Department of Health on wastewater systems. He said there were a number of systems approved by the Health Department to be used on site. Mr. Pammel asked Mr. Brandenstein if his client had looked at any of the other systems. Mr. Brandenstein said they had explored every option that would allow the septic fields to be on the lots where the houses were. He said the issue with the lots was unique. Mr. Brandenstein noted that precedence would not be set.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to deny VC 2003-SP-074 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BALMORAL ASSOCIATES, L.L.C., VC 2003-SP-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit individual sewage disposal system on a lot other than the lot of the principal use served by the system. Located at 13701 Balmoral Greens Ave. and 7501 Detwiller Dr. on approx. 1.68 ac. of land zoned

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R-C and WS. Springfield District. Tax Map 74-4 ((3)) 40 and pt. 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 July 15, 2003; 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 presented testimony showing compliance with all of the required standards for a variance.
3. The character of the Zoning District would be changed by the granting of the variance.
4. There are at least four of the required standards that are not met.
5. The hardship that creates the need for the variance is self imposed.
6. The applicant put together the development package and committed to proffers.
7. The applicant laid out the property and consulted a soil consultant.
8. Construction activity aggravated the problem on the lots and is attributable to the applicant.
9. This is not a demonstrable hardship but is a privilege sought by the applicant.
10. In 1982, 40,000 acres in the Occoquan was downzoned, and there are many lots within the R-C District that do not perk. The Board is not aware of any other lots that were divided to create perk sites on other lots.
11. If new construction requires off site septic fields, it might be more appropriate for the Board of Supervisors to review.
12. An application like this triggers concern for the character of the area.
13. A conclusion could not be made that the application meets Standard 9 based on what is before the Board.
14. The intent of this application is to maximize the yield and maximize the number of houses and this is not in character with the Occoquan.
15. There are other odd shaped lots in the subdivision with an attenuated pipe stem and septic drainfield that are a considerable distance from the body of the lots; however, they all have a contiguous geometric shape and do not require the crossing of a public road.

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

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confiscation as distinguished from a special privilege or convenience sought by the applicant.

- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 23, 2003.

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Mr. Hart moved to deny VC 2003-SP-075 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

BALMORAL ASSOCIATES, L.L.C., VC 2003-SP-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit individual sewage disposal system on a lot other than the lot of the principal use served by the system. Located at 13700 Balmoral Greens Ave. and 7501 Detwiller Dr. on approx. 1.91 ac. of land zoned R-C and WS. Springfield District. Tax Map 74-4 ((3)) 167 and pt. 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 July 15, 2003; 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 presented testimony showing compliance with all of the required standards for a variance.
- 3. The character of the Zoning District would be changed by the granting of the variance.
- 4. There are at least four of the required standards that are not met.
- 5. The hardship that creates the need for the variance is self imposed.
- 6. The applicant put together the development package and committed to proffers.
- 7. The applicant laid out the property and consulted a soil consultant.
- 8. Construction activity aggravated the problem on the lots and is attributable to the applicant.
- 9. This is not a demonstrable hardship but is a privilege sought by the applicant.
- 10. In 1982, 40,000 acres in the Occoquan was downzoned, and there are many lots within the R-C District that do not perk. The Board is not aware of any other lots that were divided to create perk sites on other lots.
- 11. If new construction requires off site septic fields, it might be more appropriate for the Board of Supervisors to review.



~ ~ ~ July 15, 2003, BALMORAL ASSOCIATES, L.L.C., VC 2003-SP-074 and VC 2003-SP-075, continued from Page 632

12. An application like this triggers concern for the character of the area.
13. A conclusion could not be made that the application meets Standard 9 based on what is before the Board.
14. The intent of this application is to maximize the yield and maximize the number of houses and this is not in character with the Occoquan.
15. There are other odd shaped lots in the subdivision with an attenuated pipe stem and septic drainfield that are a considerable distance from the body of the lots; however, they all have a contiguous geometric shape and do not require the crossing of a public road.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 23, 2003.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      JEFFREY F. & EVELYNE M. WILLIS, SP 2003-MA-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 9.4 ft. from side lot line. Located at

~ ~ ~ July 15, 2003, JEFFREY F. & EVELYNE M. WILLIS, SP 2003-MA-023 and VC 2003-MA-079, continued from Page 633

3617 Hummer Rd. on approx. 22,726 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((3)) 1B. (Concurrent with VC 2003-MA-079).

9:00 A.M. JEFFREY F. & EVELYNE M. WILLIS, VC 2003-MA-079 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 3617 Hummer Rd. on approx. 22,726 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((3)) 1B. (Concurrent with SP 2003-MA-023).

Chairman DiGiulian noted that the above referenced applications had been moved to August 5, 2003, at 9:00 a.m.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MEREDITH J. DEARBORN, VC 2003-MA-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 26.5 ft. with stoop 23.51 ft. and steps 21.5 ft. from front lot line. Located at 3026 Westfall Pl. on approx. 8,392 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 228. (Concurrent with SP 2003-MA-019).

9:00 A.M. MEREDITH J. DEARBORN, SP 2003-MA-019 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 accessory structure to remain 10.8 ft. from rear lot line. Located at 3026 Westfall Pl. on approx. 8,392 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 228. (Concurrent with VC 2003-MA-072).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Raymond Rochefort, Agent, replied that it was.

Mavis Stanfield, Senior 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 shed to remain 10.8 feet from the rear lot line. The minimum required yard would be equal to the height of the shed, 12.4 feet. The shed was located 10.8 feet from the rear lot line; therefore a modification of 1.6 feet or 13.0 percent was required. The applicant also requested a variance to permit construction of a roofed deck 26.5 feet from the front lot line with a stoop 23.51 feet from the front lot line and steps located 21.5 feet from the front line. The Zoning Ordinance permits the roofed deck to be located 30.0 feet from the front lot line which was the minimum yard required for a front yard. The Zoning Ordinance permits an extension of 5.0 feet for the stoop and steps; therefore, variances of 3.5 feet for the roofed deck, 1.49 feet for the stoop, and 3.5 feet for the steps were required.

Mr. Rochefort presented the variance request as outlined in the statement of justification submitted with the application. He explained that the applicant was retired and enjoyed the outdoors. He stated that a carpenter's helper misplaced the measurement on the shed in the rear of the lot. Mr. Rochefort said the placement of the shed had not significantly impacted anything.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 2003-MA-072 for the reasons noted in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MEREDITH J. DEARBORN, VC 2003-MA-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 26.5 ft. with stoop 23.51 ft. and steps 21.5 ft. from front lot line. Located at 3026 Westfall Pl. on approx. 8,392 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 228. (Concurrent

~ ~ ~ July 15, 2003, MEREDITH J. DEARBORN, VC 2003-MA-072 and SP 2003-MA-019, continued from Page 634

with SP 2003-MA-019). 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 15, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a variance.
3. The proposed deck is 26.5 feet from the lot line.
4. There is no other location to construct the deck.
5. 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 a roofed deck, stoop and steps, as shown on the plat prepared by Bryant L. Robinson, dated August 8, 2002, submitted with this application and is not transferable to

~ ~ ~ July 15, 2003, MEREDITH J. DEARBORN, VC 2003-MA-072 and SP 2003-MA-019, continued from Page 635

other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The roofed deck shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. 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 23, 2003. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack moved to approve SP 2003-MA-019 for the reasons noted in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MEREDITH J. DEARBORN, SP 2003-MA-019 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 accessory structure to remain 10.8 ft. from rear lot line. Located at 3026 Westfall Pl. on approx. 8,392 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 228. (Concurrent with VC 2003-MA-072). 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 15, 2003; 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;

~ ~ ~ July 15, 2003, MEREDITH J. DEARBORN, VC 2003-MA-072 and SP 2003-MA-019, continued from Page 636

- 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 Bryant L. Robinson, dated August 8, 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 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 23, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. and eave 2.5 ft. from side lot line. Located at 11808 Mallard Rd. on approx. 37,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-2 ((2)) 74. (Def from 6/10/03 and 7/1/03 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. John E. Link, 11808 Mallard Road, replied that it was.

Mr. Hart asked the Chairman if there were any revisions submitted.

Mavis Stanfield, Staff Coordinator, stated that Mr. Link had come to the office the previous day. She said he had a revised proposal but did not have a plat.

Mr. Pammel recommended a deferral to allow a plat to be presented to the Board so that specific action could be taken. Mr. Pammel asked the applicant how much time was needed to obtain the plat.

Mr. Link stated he could get the plat within a week.

Mr. Pammel moved to defer VC 2003-MV-047 to July 29, 2003, at 9:00 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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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

- 9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land req. zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, B and C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03)
- 9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 req. and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03)
- 9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03)

Chairman DiGiulian noted that the above referenced applications had been moved to October 21, 2003, at 9:30 a.m.

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~ ~ ~ July 15, 2003, (Tape 1), Scheduled case of:

- 9:30 A.M. PAUL HORMANN ET AL AND DUANE HORMANN ET AL, A 2003-HM-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a commercial use (automotive windshield replacement/repair business and mobile lock repair service) and are allowing commercial vehicles to be parked on property located in the R-1 District in violation of Zoning Ordinance provisions. Located at 12345 Lawyers Rd. on approx. 2.03 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-4 ((1)) 26. (moved from 4/29/03 at appl req.) (def dec from 6/24/03 and 7/8/03)

Maggie Stehman stated that the application had been based on a notice of violation that the appellant was operating a contractor's office and shop. She said the applicant stated the violation had been resolved, but the County had not been able to verify that the office had not been operating. She noted that the Board had deferred decision from the prior week and had requested the appellants attend. Ms. Stehman said the attorney had submitted a letter stating that they were no longer representing the appellant.

The appellants were not in attendance.

Ms. Gibb moved to uphold the decision of the Zoning Administrator for appeal application A 2003-HM-010. Mr. Beard seconded the motion.

Mr. Hammack stated that the burden of proof was on the appellants to establish the determination of the Zoning Administrator was in error, and based upon the testimony presented at the prior hearing, the burden of proof was not satisfied. He said he would support the motion.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0-1. Mr. Pammel abstained from the vote. Mr. Ribble was not present for the vote.

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~ ~ ~ July 15, 2003, (Tape 1), After Agenda Items:

Approval of July 8, 2003 Resolutions

Mr. Hammack moved to approve the Resolutions. 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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As there was no other business to come before the Board, the meeting was adjourned at 2:05 p.m.

Minutes by: Alison Capo

Approved on: October 19, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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 22, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; James Hart; James Pammel; Paul Hammack; and V. Max Beard. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 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.

~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN & MARGARET BUSH, VCA 99-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from rear lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with SP 2003-MV-018). (Def from 7/15/03)

9:00 A.M. MARVIN & MARGARET BUSH, SP 2003-MV-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit patio and accessory structure to remain 0.2 ft. from side lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with VCA 99-V-084). (Def from 7/15/03)

Chairman DiGiulian noted that deferrals were requested on the above cases. Mr. Hammack moved to defer VCA 99-V-084 and SP 2003-MV-018 to July 29, 2003, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0.

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~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE AND DIMITRA SGARDELIS, VC 2003-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from side lot line. Located at 2238 Richelieu Dr. on approx. 8,471 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 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. Dimitra Sgardelis, 2238 Richelieu Drive, Vienna, Virginia, replied that it was.

Lindsay Shulenberger, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of addition to enclose an existing carport 8.5 feet from side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 1.5 feet was requested.

Ms. Sgardelis presented the variance request as outlined in the statement of justification submitted with the application. She said the addition was being proposed for safety reasons.

Chairman DiGiulian asked the applicant if the subject lot was irregularly shaped, to which Ms. Sgardelis replied affirmatively.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-PR-087 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE AND DIMITRA SGARDELIS, VC 2003-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from side lot line. Located at 2238 Richelieu Dr. on approx. 8,471 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 105. Mr. Pammel moved

~ ~ ~ July 22, 2003, GEORGE AND DIMITRA SGARDELIS, VC 2003-PR-087, continued from Page 641

that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants requested a very modest variance to the side yard requirements based on the irregular lot size, variance request being only 1 ½ feet.
3. The applicants have met the prescribed requirements for the granting of the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Barry L. Wissinger, dated March 5, 1990 as revised through May 15, 2003, 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.

~ ~ ~ July 22, 2003, GEORGE AND DIMITRA SGARDELIS, VC 2003-PR-087, continued from Page 642

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 absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M.       HOWARD J. CARLTON, JR., TRUSTEE, VC 2003-MV-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 9044 Patton Blvd. on approx. 1.12 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((5)) 82.

Chairman DiGiulian informed the Board members that the notices for this case were not in order, and the case had been moved to September 9, 2003, at 9:00 a.m.

Mr. Hart asked staff to check on the inconsistency in the applicant's name on the records. Susan Langdon, Chief, Special Permit and Variance Branch, explained that staff was aware of the inconsistency, was addressing the issue, and that, in fact, was the nature of the problem that caused the notices to be incorrect.

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~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M.       NASR & SHAISTA CHAUDHRY, VC 2003-HM-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in front yards of a corner lot. Located at 2700 Floris La. on approx. 26,239 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 25-1 ((16)) 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. Shaista Chaudhry, 2700 Floris Lane, Herndon, Virginia, replied that it was.

William Mayland, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit fences greater than 4.0 feet in height to remain in the front yards of a corner lot. The fence was proposed to have a maximum height of 6.0 feet along West Ox and 6.5 feet when including the retaining wall at the intersection of West Ox and Floris Lane; therefore, variances of 2.0 feet and 2.5 feet, respectively, were requested.

Mr. Hammack asked for clarification regarding the inconsistency in fence heights in the notes on the plat and the body of the variance request. Mr. Mayland explained that at the corner of West Ox and Floris Lane, there was a 3.5-foot retaining wall, which the 3-foot proposed fence was built directly behind, totaling 6.5 feet. He said that along West Ox Road there was an existing 8-foot fence with no retaining wall, which was the location of the proposed 6-foot fence.

Ms. Chaudhry presented the variance request as outlined in the statement of justification submitted with the application. She thanked the Board for the approval-in-part and waiver of the one-year waiting period for reapplication granted at a prior hearing; however, she stated that the fence could not be moved to the berm because there were trees at that location. She explained that she and her husband were financially and

emotionally exhausted and could not afford to retain the services of private companies to report on the noise levels and traffic count on West Ox Road. Ms. Chaudhry said there were many 6-foot and higher fences along West Ox Road and on the narrower connecting streets. She explained that they had planted 22 trees on their property, but it would take many years for the vegetation to mature and provide screening. She described the 4-foot fence that existed at the time they purchased the property and stated that people who walked on West Ox Road could access their property to relieve themselves. Ms. Chaudhry explained that just inside the boundary of the property, the land rose to four feet, and a 4-foot fence was not visible and did not prohibit trespassers from coming onto their property. She stated that if the existing 8-foot fence were cut down to four feet, it would not be useful for screening or barrier purposes. She said the fence was not in violation of the homeowners' regulations. Ms. Chaudhry concluded by saying that the unusual topography surrounding the retaining wall made simple solutions impossible and impractical.

Mr. Hammack and the applicant discussed the details of the requested fence and the integration of the fence into the entrance feature, during which Ms. Chaudhry relayed some history regarding the entrance features in the neighborhood. Mr. Chaudhry added that they planned to install vegetation in the 1.5-foot area between the retaining wall and the fence that would climb and cover the wall within one season.

Mr. Hart said he didn't recall seeing a 1.5-foot space between the fence and the retaining wall during his site visit, and it didn't appear on the plat. He asked if the applicants were planning to move the fence from its current location or just cut the boards down by two feet. Ms. Chaudhry said they could not move the fence back because there were trees in that location, and Mr. Chaudhry confirmed that there was a 1.5-foot space.

Mr. Hart asked if the fence could be moved a few feet away from the retaining wall. Ms. Chaudhry replied that they would be willing to remove the fence from behind the retaining wall and take it down completely.

Mr. Hart asked if the applicants were planning to cut down the fence along West Ox Road. Ms. Chaudhry replied that they planned to cut it down by two feet.

Chairman DiGiulian called for speakers. There were no speakers; however, Chairman DiGiulian noted that the Board had received three opposition letters.

Mr. Hammack stated that he was not prepared to make a motion to support or deny the application without more information regarding the proposed treatment of the entrance feature and the area going across on the Floris Lane side and how it would be integrated. He referred to an entrance feature with a 6-foot fence that he had seen near the subject property, which he described as tastefully done, and said that he thought something similar might be approved. He said he was prepared to make a motion to defer the case.

Ms. Gibb clarified that the applicants had stated that they wanted a 6-foot fence along West Ox Road and they would remove the fence behind the retaining wall. Ms. Chaudhry concurred and stated that there was no fence on Floris Lane. She said they would reduce the 8-foot fence to 6 feet along West Ox Road.

Mr. Hammack asked how they planned to taper the 6-foot fence down to the retaining wall. The applicants replied that without having the two feet of fence on top of the retaining wall, it would look awkward.

Ms. Gibb said she would support a one-week deferral and would go out to view the site again.

Mr. Hammack agreed that a deferral was in order and suggested the applicants bring in some photographs. Ms. Chaudhry said they would be happy to bring in some photographs and brainstorm about what to do with the end of the fence.

Mr. Hammack suggested they also take photographs of the house a block away with an entrance feature and a similar fence to what the applicants were describing, and Mr. Hammack and the applicant briefly discussed the way the entrance feature appeared on that property.

Mr. Hammack moved to continue VC 2003-HM-080 to July 29, 2003, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Mr. Pammel requested that the case be the first item on the agenda.

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~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. GFS REALTY, INC., SP 2003-SP-020 Appl. under Sect(s). 8-912 of the Zoning Ordinance to permit additional sign area in a shopping center. Located at 7501 Huntsman Blvd. on approx. 12.42 ac. of land zoned C-6. Springfield District. Tax Map 88-4 ((1)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Houston, the applicant's agent, replied that it was.

Fran Burnszynski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow additional sign area for a shopping center, Huntsman Square Shopping Center, specifically to permit existing building-mounted signs for interior mall tenants. Staff recommended approval of the application, subject to the revised proposed Development Conditions dated July 16, 2003, which were distributed at the hearing.

Mr. Hart asked staff if the confusion would be resolved regarding the signs that were there and the signs that were approved or not approved if the application were approved. Mr. Burnszynski replied that the Special Permit would approve the existing signs on the building. He explained that the out-buildings were not fully tenanted, and there would probably be some additional building-mounted signs for those future tenants. He said the Special Permit would resolve the violations that resulted from the lack of sign permits for the interior mall tenants with building-mounted signage.

Regarding the change from 8 to 12 feet in revised Development Condition 6, Mr. Hart asked staff if that was going to change in the future or if it was to deal with an existing situation. Mr. Burnszynski replied that the property was only permitted one freestanding sign and that there was more than one currently. He said the applicant was advised in that regard and planned to replace the multiple signs with one 12-foot high freestanding sign.

Mr. Houston came forward to speak and said the shopping center was built in 1989 and had not had any prior zoning cases. He explained that the center had a unique configuration in that the anchor tenant was a Giant Food Store and it was sort of a strip center, but it also had interior mall tenants. He said some of the interior mall tenants without exterior frontage had been issued sign permits, but a recent tenant had been denied a permit. Mr. Houston said he believed the advertisement contained a misnomer in that they were not asking for any additional sign area than the square footage that would be permitted based upon the existing linear frontage of the buildings. He explained that the center was located along the Fairfax County Parkway and was surrounded by a thick screen of trees. He said the center was not clearly visible from the parkway because of the buffer the trees provided and the fact that the center was sunken down.

In regard to the freestanding signs, Mr. Houston stated that there were currently three freestanding signs on the property that had been in place for many years. He explained that during the application process involving the building-mounted signs, they were made aware that only one freestanding sign was allowed. He said they intended to remove two of the signs and replace the third one, and although by-right, they could have used a 20-foot high sign, they had agreed instead to install a 12-foot high sign. Mr. Houston presented a photograph of the proposed sign and stated that the applicant was in agreement with the revised Development Conditions dated July 16, 2003.

Mr. Pammel asked for clarification regarding the interior signs for the interior tenants and whether signs would be placed on the south wall of the building facing Fairfax County Parkway. Mr. Houston explained that the interior tenants did have interior signs that were not regulated by the sign ordinance. He said the proposed signs were on the front of the center facing Huntsman Boulevard on the common wall with Giant, and there would not be signs on the south wall facing the parkway.

Chairman DiGiulian called for speakers.

Tom Tulenko, 7415 Carath Court, Springfield, Virginia, came forward to speak in opposition to the application. He asked why the Starbucks name was on the sign. He said the information he had received just addressed the interior mall. He questioned whether the rest of the perimeter stores would demand their names be added to the sign or the building.

Mr. Houston explained that the freestanding sign would reflect the names of six tenants below the Giant Food name and that the owner would negotiate with the tenants in their leases as to which would be included. He explained that the information Mr. Tulenko said he had received pertained to the building-

~ ~ ~ July 22, 2003, GFS REALTY, INC., SP 2003-SP-020, continued from Page 645

mounted signs and not the by-right freestanding sign, which was not an issue before the BZA.

Mr. Hart briefly explained to Mr. Tulenko that although it was a by-right freestanding sign, the Development Conditions would limit the height and size, and it could not be larger than 80 square feet. He confirmed that the landlord controlled what names appeared on it.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2003-SP-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

GFS REALTY, INC., SP 2003-SP-020 Appl. under Sect(s). 8-912 of the Zoning Ordinance to permit additional sign area in a shopping center. Located at 7501 Huntsman Blvd. on approx. 12.42 ac. of land zoned C-6. Springfield District. Tax Map 88-4 ((1)) 8. 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 22, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. The request is reasonable based on the conditions explained in the staff report and by the applicant's agent.
4. The special permit will resolve the question of getting sign permits and violations and clarify what the interior tenants can do henceforth.
5. The exterior freestanding sign will be conditioned and limited, which is reasonable under the circumstances.

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). 8-912 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, 7501 Huntsman Boulevard (12.42 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat sheet 1 and 2 prepared by A. Morton Thomas and Associates, Inc., dated May, 2002 and revised through April 30, 2003 and sheets 3 and 4 prepared by Service Neon Signs, Inc. dated March 27, 2003 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

~ ~ ~ July 22, 2003, GFS REALTY, INC., SP 2003-SP-020, continued from Page 646

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 permit 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 aggregate area of building-mounted signage for the building containing the mall in the southeastern portion of the site shall not exceed 596 square feet and shall be allocated to interior and exterior tenants as shown on Sheets 3 and 4 of the special permit plat. The amount of building-mounted signage permitted for the building along the northern property boundary (out-building) shall be in accordance with Article 12 of the Zoning Ordinance.
6. The number of freestanding signs for the site shall be limited to one measuring no more than 80 square feet in area and being no taller than 12 feet. If the freestanding sign is illuminated, it shall be internally lit or down-lit. The freestanding sign be no closer than 5 feet of the curb line of a service drive, travel lane or adjoining street and when located on a corner shall be subject to the provisions of Sect. 2-505. All other freestanding signs shall be removed within 30 days of this approval. No pole signs shall be permitted.
7. Illumination of all signage shall be subject to the performance standards of outdoor lighting as set forth in Part 9 of the Article 14.
8. Sign permits shall be obtained for all signs.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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 sign permits have been issued. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. RONNIE GOLLEHON, VC 2003-MA-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into 2 lots with proposed Lot 27B having a lot width of 22.26 ft. Located at 6917 Cherry La. on approx. 1.24 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((7)) 27.

Chairman DiGiulian noted that VC 2003-MA-070 had been moved to September 30, 2003, at 9:00 a.m.

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~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. WALTER JOHN COTTER, VC 2003-SU-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.1 ft. from side lot line. Located at 14703 Crenshaw Dr. on approx. 9,235 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 44-3 ((2)) (26) 25.

~ ~ ~ July 22, 2003, WALTER JOHN COTTER, VC 2003-SU-082, continued from Page 647

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 J. Cotter, 14703 Crenshaw Drive, Centreville, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 4.1 feet from the side lot line. A minimum side yard of 8.0 feet is required; therefore, a variance of 3.9 feet was requested.

Mr. Cotter presented the variance request as outlined in the statement of justification submitted with the application. He explained that when he was contemplating adding a garage to his property, he drove around his community to view other properties with garages and found garages that looked like add-ons that he felt were out of proportion and changed the character of the neighborhood. He presented photographs of some of the garages he viewed. Mr. Cotter stated that it was important to him that his addition be proportional, look as if it was an original part of the house, and not change the character of the surrounding neighborhood. He explained that his house could have been better situated on the lot by the original builder, and had they done so, it would have been a more efficient use of the land, would have provided more room for expansion, and a variance would not have been needed to build his addition. He said if the addition were built as planned, there would be 20.1 feet between the garage and his neighbor's house, which already had an attached garage on the other side of it. Mr. Cotter mentioned that he had spoken with his neighbors, some of which submitted letters, and they had not voiced any opposition.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2003-SU-082 for the reasons stated in the Resolution.

Mr. Pammel stated that he would oppose the motion. He said he felt this was a convenience and that in looking at the lot layout for the subdivision, every single lot in the subdivision had the same width and size, and there was nothing irregular that would justify the granting of a variance. He said he might be able to support something less than building within 4.1 feet of the side lot line, but the 30-foot depth along the lot line too much and too close.

Chairman DiGiulian stated that he would support the motion. He said he thought the location of the house on the lot did create a hardship for the applicant, and with the addition, there would still be 20 feet between the garage and the adjacent house.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER JOHN COTTER, VC 2003-SU-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.1 ft. from side lot line. Located at 14703 Crenshaw Dr. on approx. 9,235 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 44-3 ((2)) (26) 25. 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 22, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the standards for a variance.
3. The applicant is proposing to build the smallest version of a garage he could and trying to minimize the impact on the neighbor.
4. Supporting letters from neighbors were received.



~ ~ ~ July 22, 2003, WALTER JOHN COTTER, VC 2003-SU-082, continued from Page 648

5. There is no other location on the lot for the garage.
6. If the house had been sited more toward the northern property line, a variance wouldn't have been 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** with the following limitations:

1. This variance is approved for the location of an addition, as shown on the plat prepared by Tami A. Lenox, dated April 25, 2003, revised through May 27, 2003, 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. Beard seconded the motion, which carried by a vote of 4-1-1. Mr. Pammel voted against the motion. Mr.

~ ~ ~ July 22, 2003, WALTER JOHN COTTER, VC 2003-SU-082, continued from Page 649

Hammack abstained from the vote. Mr. Ribble was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 22, 2003, (Tape 1), Scheduled case of:

9:00 A.M. PETER C. SLEIGHT, VC 2003-MV-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.6 ft. from side lot line. Located at 6732 Swarthmore Dr. on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (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. Neal Hergenrather, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 9.6 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 0.4 feet was requested.

Mr. Hart asked for clarification regarding the statement of justification reflecting 9.5 feet and the staff report reflecting 9.6 feet. Susan Langdon, Chief, Zoning Evaluation Division, replied that the plat showed 9.6 feet and that whatever was shown on the plat was what was required to be advertised.

Mr. Hammack advised the applicant's agent that if the application was approved as advertised, the applicant would be one inch in violation.

Mr. Hammack asked what dimension was listed in the application. Mr. Sherman replied that the application reflected 9 feet, 6 inches.

Mr. Hammack asked why the applicant was not contacted in regard to the discrepancy. Ms. Langdon explained that application acceptance was usually where things of that nature were caught and discussed.

Chairman DiGiulian asked if the applicant could amend his request or if it would require a new application. Ms. Langdon replied that it could be amended, but would have to be readvertised because it would be a greater variance. She said a new application would not be required.

Ms. Gibb asked the applicant's agent if they needed the inch. Mr. Hergenrather stated that they did not.

Chairman DiGiulian asked the applicant's agent if they wanted to go forward with the application as it was advertised. Mr. Hergenrather replied affirmatively.

Mr. Hergenrather presented the variance request as outlined in the statement of justification submitted with the application. He said the subject lot was characterized with exceptional narrowness, being 60 feet in width, and the lot was smaller than allowed under R-4 District zoning regulations, which called for a lot width of 70 feet. He stated that the subject property's area was 7,200 square feet, which was smaller than the average of 8,880 for an R-4 District property. He presented some photographs of other properties in the area which reflecting additions built to the side, which he stated that the majority of the homeowners in the area had done.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VC 2003-MV-084 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA****VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

PETER C. SLEIGHT, VC 2003-MV-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.6 ft. from side lot line. Located at 6732 Swarthmore Dr. on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (3) 21. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 22, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The lot area is 7,200 square feet.
4. The applicant met the required standards 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:

~ ~ ~ July 22, 2003, PETER C. SLEIGHT, VC 2003-MV-084, continued from Page 651

1. This variance is approved for the location of an addition, as shown on the plat prepared by Bryant L. Robinson, dated April 23, 2003, revised May 20, 2003, 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.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 30, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 22, 2003, (Tapes 1 & 2), Scheduled case of:

9:00 A.M.      LAWRENCE E. ANDERSON, VC 2003-LE-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line and 17.2 ft. from front lot line. Located at 2918 Breezy Terr. on approx. 12,317 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3 ((4)) 19. (def. from 6-24-03)

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 Anderson, 2918 Breezy Terrace, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition 5.0 feet from a side lot line and 17.2 feet from the front lot line. A minimum side yard of 20 feet and a minimum front yard of 25 feet are required; therefore, variances of 5.0 feet and 7.8 feet, respectively, were requested.

Mr. Sherman advised that subsequent to the filing of the variance application, at least one complaint for the subject property had been filed with the Code Enforcement Branch of the Department of Public Works and Environmental Services. He said Code Enforcement Branch determined that there are unsafe structures on the site, and corrective work orders for the structures would be issued.

Mr. Hammack asked for more information regarding the unsafe structures and why staff raised the issue if it was unrelated to the application. Susan Langdon, Chief, Zoning Evaluation Branch, replied that the issue was raised because it had recently come up from some of the neighbors and because the structures were not reflected on the plat. She explained that the Ordinance requires that all existing and proposed structures be shown on the plat when submitting a variance application. Mr. Sherman said the unsafe structures were located in the rear yard and consisted of a shed and some retaining walls. Ms. Langdon added that as the structures were not reflected on the plat, they had not been reviewed by the Zoning Evaluation Branch.

Mr. Anderson explained that he had called the zoning office and asked if it was okay to put up a storage shed. He said he was told, "Fine, no problem." He added that he thought it highly unfair to consider a notice which had not yet been issued.

Mr. Anderson presented the variance request as outlined in the statement of justification submitted with the application. He stated that in order to build a proper width garage on his house, which was built in 1955, he would need to build within 5 feet of the lot line. He said there were several properties in the neighborhood

~ ~ ~ July 22, 2003, LAWRENCE E. ANDERSON, VC 2003-LE-061, continued from Page 652

with homes within 5 feet of the property lines. Mr. Anderson presented a photograph of the house with an adjacent carport directly across the street from him, which he said the owner intended to convert into a garage. He stated that he could see no reason why a carport was permitted within 5 feet from a side lot line, but not a garage. He said public welfare would be best served by the construction of a garage, which was safer than a carport and would deter crime.

Mr. Anderson rescinded his request for permission to build within the 25-foot front setback of his property to avoid the front of the proposed garage blocking the view of the cul-de-sac from the neighbors' properties.

Mr. Anderson said the garage would be constructed to the highest building standards with materials compatible to the existing structure and would improve the value of his property and contribute to the neighborhood aesthetics. He mentioned that he had installed up-to-date windows and a front storm door. Mr. Anderson stated that his property was of an irregular shape due to an adjoining burial plot. He said the burial plot would make it impractical to put a garage on that side.

Mr. Hammack asked why the garage needed to extend 50.9 feet to the rear of the property adjacent to the property line. Mr. Anderson said he wanted to construct a garage, and whether it was forward or to the rear would be up to the Board. He stated again that it would not go beyond the 25-foot front setback.

Chairman DiGiulian asked if the applicant was still requesting a 50.9-foot garage depth in light of his rescinding the variance request regarding the front lot line. Mr. Anderson replied that he wanted to build a 20-foot long garage at either the side of the house or to the front. He said he requested more so the Board could decide.

Mr. Hammack advised the applicant that he needed to tell the Board where he wanted the garage located. Mr. Anderson said he preferred to extend the garage from the 25-foot front setback to the side door, so one could go out the side door directly into the garage. He said that was all he needed.

Mr. Hammack advised the applicant that he should come back with a new plat reflecting what he wanted. He stated that there was opposition and that the applicant had requested a variance to the front and then rescinded it. He said that neighbors had attended to oppose the applicant's request and were not being given the opportunity to comment on what the applicant really wanted.

A discussion ensued regarding the need for a revised plat reflecting exactly what the applicant wanted to build, during which Mr. Hammack explained that a variance is granted in accordance with the approved location as shown on the plat. He also mentioned that all accessory structures should be shown on the plat, to which Mr. Anderson responded by explaining that the retaining walls and shed had been constructed or installed after the plat was completed.

Chairman DiGiulian called for speakers.

Donovan Upchurch, 2916 Breezy Terrace, Alexandria, Virginia, came forward to speak in opposition to the application. He said that when he purchased his property in 1973 there were no garages in the community, and to his knowledge, no one had ever requested a variance to build a garage. He did not agree with the applicant's statement of justification regarding the fir trees adjacent to the proposed construction providing substantial coverage, and he said the foliage the applicant stated that he intended to plant in the 5 feet between the addition and the lot line would cross the property line when mature. In regard to the proposed addition changing the character of the neighborhood, Mr. Upchurch said there are no garages in the front of any properties on Breezy Terrace. He stated that a petition and opposition letters had been submitted to the Board and presented photographs of the area of the proposed addition to demonstrate how he believed views would be obstructed by the proposed addition.

Mr. Anderson, in his rebuttal, stated that the markings on the photograph presented by Mr. Upchurch were incorrect in that they measured the 25-foot setback from the street instead of the lot line.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VC 2003-LE-061 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

LAWRENCE E. ANDERSON, VC 2003-LE-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line and 17.2 ft. from front lot line. Located at 2918 Breezy Terr. on approx. 12,317 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3 ((4)) 19. (def. from 6-24-03) 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 22, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application does not meet all the variance standards.

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. Hammack moved to waive the 12-month limitation for refiling an application. Mr. Pammel seconded the

~ ~ ~ July 22, 2003, LAWRENCE E. ANDERSON, VC 2003-LE-061, continued from Page 654

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 July 30, 2003.

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~ ~ ~ July 22, 2003, (Tape 2), Scheduled case of:

9:00 A.M. MARK A. LAWRENCE, SPA 89-D-051-2 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 89-D-051 previously approved for a home professional office to permit change in development conditions and to add land area. Located at 8612 Tebbs La. on approx. 7.28 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 48 and 52A.

Chairman DiGiulian noted that SPA 89-D-051-2 had been moved to August 5, 2003, at 9:00 a.m.

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~ ~ ~ July 22, 2003, (Tape 2), Scheduled case of:

9:00 A.M. GREAT FALLS SWIM AND TENNIS CLUB, INC., SPA 82-D-019-8 Appl. under Sect(s). 3-103 and 8-914 of the Zoning Ordinance to amend SP 82-D-019 previously approved for community swim and tennis club to permit building additions and site modifications and to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 18.0 ft. from side lot line. Located at 761 Walker Rd. on approx. 5.52 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((1)) 27.

Mr. Pammel moved to defer SPA 82-D-019-8 to September 16, 2003, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ July 22, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
SP 99-B-054, B. W. Management

Staff recommended Additional Time of 60 days to July 30, 2003. Mr. Pammel moved to approve 6 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was November 30, 2003.

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~ ~ ~ July 22, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
SP 00-Y-052, V K Associates

Mr. Pammel moved to approve 24 months of Additional Time. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was September 14, 2005.

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~ ~ ~ July 22, 2003, (Tape 2), After Agenda Item:

Request for Additional Time  
SP 99-Y-065, Centreville Presbyterian Church

Staff recommended Additional Time of 3 months to October 1, 2003. Mr. Pammel moved to approve 6 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was January 1, 2004.

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~ ~ ~ July 22, 2003, (Tape 2), After Agenda Item

Request for Intent to Defer  
John E. Link, Trustee, and Kathryne A. Link, Trustee, VC 2003-MV-047

Mr. Pammel moved to approve the Request for Intent to Defer to September 9, 2003. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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~ ~ ~ July 22, 2003, (Tape 2), After Agenda Item

Approval of July 15, 2003 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Kathleen A. Knoth

Approved on: November 30, 2004

Regina Thorn Corbett  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

John F. Ribble III  
John F. Ribble III, Vice Chairman, for  
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 29, 2003. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack. V. Max Beard was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 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.

~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. NASR & SHAISTA CHAUDHRY, VC 2003-HM-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in front yards of a corner lot. Located at 2700 Floris La. on approx. 26,239 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 25-1 ((16)) 1. (cont'd from 7/22/03)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Shaista Chaudhry, 2700 Floris Lane, Herndon, Virginia, replied that it was.

Chairman DiGiulian stated that VC 2003-HM-080 had been deferred for decision only.

Mr. Hammack stated that he had revisited the property and viewed the two entrances into the Floris community, including the one near the Chaudhry property. He stated that the entrance feature at the other entrance was acceptable. He explained that the fence in that location was four feet in height, was pulled back off the sidewalk as much as six feet in some places, was located on a berm, terminated at a four-foot height at the entrance feature, and there was a lot of vegetation and shrubs between the fence and the sidewalk. Mr. Hammack said the entrance feature near the Chaudhry property was located right up on the sidewalk. He said that although he had initially thought that if the Chaudhrys could have presented something consistent with the other entrance, it would be acceptable, his thought was based on an erroneous recollection, and the facts did not support that. He noted that the Board had previously approved a fence six feet in height on the berm for the Chaudhrys, which would give them more relief than the house at the other entrance, but the existing fence on the Chaudhry property was eight feet in height and was located close to the sidewalk with little room for vegetation to grow between the fence and the sidewalk.

Mr. Hammack moved to deny VC 2003-HM-080 for the reasons stated in the Resolution.

Mr. Pammel seconded the motion and said that he had also visited the property. He said he had found that there was a clear shot through so that a fence could be built on the berm by removing some of the lower branches of the white pines. He said he would not be in favor of a fence six feet in height on the berm, and based on the existing fences he observed in the vicinity, he would favor a restriction of the height to no more than five feet, which would give adequate protection if the fence was located on the berm.

A brief discussion ensued regarding the disposition of the previous application filed by the applicants. It was determined that the Board had requested a new plat from the applicants, and when the applicants submitted the new plat, the Board indicated it was not what it had intended and took no action on the application, and the applicants indicated they would file a new application. Based on that, Mr. Hammack stated that the applicant could put a fence four feet in height where it was currently located or on the berm as a matter of right.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NASR & SHAISTA CHAUDHRY, VC 2003-HM-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in front yards of a corner lot. Located at 2700 Floris La. on approx. 26,239 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 25-1 ((16)) 1. (cont'd from 7/22/03)  
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

~ ~ ~ July 29, 2003, NASR & SHAISTA CHAUDHRY, VC 2003-HM-080, continued from Page 657

applicable State and County Codes and with the by-laws of 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 29, 2003; 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 satisfied the required standards for a variance.
3. The fence would not be in character with the zoning district.
4. There is nothing unusual about this lot from others in the neighborhood.

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 6-0. Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. BOARD OF SUPERVISORS/DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, VC 2003-MV-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. from front lot line of a corner lot. Located at 8819 Holland Rd. on approx. 4.57 ac. of land zoned C-3. Mt. Vernon District. Tax Map 102-1 ((1)) pt. 4. (In association with SEA 82-V-012-4 and 2232-V03-5). (Moved from 6/10/03 per appl req.)

Chairman DiGiulian noted that VC 2003-MV-057 had been administratively moved to August 5, 2003, at 9:00 a.m., for notices.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. MARVIN & MARGARET BUSH, VCA 99-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from rear lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with SP 2003-MV-018). (Def from 7/15/03 and 7/22/03)

9:00 A.M. MARVIN & MARGARET BUSH, SP 2003-MV-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit patio and accessory structure to remain 0.2 ft. from side lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with VCA 99-V-084). (Def from 7/15/03 and 7/22/03)

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 Pan, the applicant's agent, replied that it was.

Kristen Shields, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a patio and accessory structure to remain 0.2 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a modification of 9.8 feet was requested. The applicants also requested a variance to permit construction of an addition 12 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 13 feet was requested.

Mr. Pan presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. He stated that the house was built in 1939 and predated the zoning requirements. He said the main house was situated on the back 30 feet of the lot 12 feet from the property line, which was the only flat portion of the lot, and there was 80 feet between the main house and Fort Hunt Road, which was a steep area. Mr. Pan stated that the applicants had bought the property in 1989, were currently trying to upgrade, and were requesting an addition to be located eight feet to the south of the main building. He said there was an eight-foot retaining wall on the east and south property lines behind the house, and the adjoining property was at least 15 feet above the wall with the house located approximately 30 feet above the subject house's main elevation. He stated that if the proposed addition was pushed forward in compliance with the rear setback requirement, the view from the front of the house would be obstructed. Mr. Pan explained that the requests were made to align the proposed addition with the west wall of the main building and to install brick paving at grade level in the patio area as part of an effort to restore and return the area to its original intended use as comfortable, workable outdoor space.

Ms. Gibb noted that the plat showed 10-foot building restriction lines in the front and on the side, which she said looked like they might be restrictive covenants from the subdivision plat, which Mr. Pan confirmed, and she asked how those could be complied with if the building went into the 10-foot building restriction line. Mr. Pan said he was dealing with setbacks, not building restriction lines, and he indicated that the architect was present and could address the question.

Tut Bartzan, 346 Albemarle Avenue, Richmond, Virginia, the architect for the project, came forward to speak. He said the boundary restriction lines were taken from a plat which was part of Mr. Bush's settlement agreement when he purchased the house, and the lines were in place at the time the house was built. He explained that he left them on the plat because he had referred to the engineer who drew the site plan, and he did not want to change elements of the drawing that he did not have control over. Mr. Bartzan said that nothing the applicants were requesting violated the 10-foot restriction lines, with the exception of redoing the

~ ~ ~ July 29, 2003, MARVIN & MARGARET BUSH, VCA 99-V-084 and SP 2003-MV-018, continued from Page 659

brick paving in the terrace area.

Mr. Hart commented that he did not understand about the special permit and the 0.2 feet from the side lot line. He asked whether that was something that had been there for many years and if the applicants' agent would address the justification for the special permit. Mr. Pan replied that the pavement had been there for many years, and when the variance was submitted, zoning had said that a special permit was needed for the pavement located 0.2 feet from the property line.

Mr. Hart asked whether the special permit applied to the arbor. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it was for both. She explained that the pavement would be connected to the house and became a patio or deck once the proposed addition was built and had to meet the side yard requirements. She said the open arbor was an accessory structure.

Mr. Hart asked why the wooden trellis was located as close as 0.2 feet from the property line. Mr. Pan replied that it existed when the applicants bought the property in 1989.

Mr. Hart said he was not sure what had changed with respect to the arbor and asked why it was not part of the application five years prior. Ms. Langdon replied that she was unaware whether it was not picked up by staff at the time or if it was because the applicants were currently refurbishing and rebuilding it, which prompted staff to require the special permit for building in error.

Chairman DiGiulian called for speakers.

Mr. Bartzen came forward to speak in support of the application. He presented photographs of the terrace and the overgrowth in the area and said this was the last phase of the applicants' effort to renovate and bring the property back to its original state. He stated that the amount of new square footage being added to the house was less than two percent of the overall square footage of the main dwelling, and although the location of the addition was in violation of the 25-foot setback, it was the area where there was a flat portion of the grade at the top of the hill, and it would be the least obtrusive to the neighbors. Mr. Bartzen said the goal was to make use of the corner of the property that had gone into disrepair, and the topography dictated that if one wanted to utilize the terrace, the proposed location was where the addition needed to come off the house. He said there would be no negative impact visually because of the difference in elevation between the subject property and the neighboring property.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VCA 99-V-084 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARVIN & MARGARET BUSH, VCA 99-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from rear lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with SP 2003-MV-018). (Def from 7/15/03 and 7/22/03) 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 29, 2003; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ July 29, 2003, MARVIN & MARGARET BUSH, VCA 99-V-084 and SP 2003-MV-018, continued from Page 660

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The proposed location is the only level place for the addition because of the topography.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Bernard J. Bartz, Jr. of Bartz & Ball, PLLC., dated March 20, 2003, as revised through April 2, 2003, 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.

~ ~ ~ July 29, 2003, MARVIN & MARGARET BUSH, VCA 99-V-084 and SP 2003-MV-018, continued from Page 661

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this variance.

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Mr. Ribble moved to approve SP 2003-MV-018 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARVIN & MARGARET BUSH, SP 2003-MV-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit patio and accessory structure to remain 0.2 ft. from side lot line. Located at 6202 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (8) 3. (Concurrent with VCA 99-V-084). (Def from 7/15/03 and 7/22/03) 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 29, 2003; 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

~ ~ ~ July 29, 2003, MARVIN & MARGARET BUSH, VCA 99-V-084 and SP 2003-MV-018, continued from Page 662

properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development condition:

1. This special permit is approved for the location of the patio and trellis shown on the plat prepared by Bernard J. Bartzen, Jr. of Bartzen & Ball, PLLC., dated March 20, 2003, as revised through April 2, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M.      ANDREW L. A. GOODMAN AND CATHIE GRANT-GOODMAN, VC 2003-BR-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. and eave 3.0 ft. from side lot line. Located at 4211 Elizabeth La. on approx. 12,184 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((12)) 70.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cathie Grant-Goodman, 4211 Elizabeth Lane, Annandale, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 5.0 feet with an eave 3.0 feet from the side lot line. A minimum side yard of 8.0 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 3.0 feet and 2.0 feet, respectively, were requested.

Ms. Grant-Goodman presented the variance request as outlined in the statement of justification submitted with the application. She said that with three growing children, additional room in her house was needed. She stated that the conditions of the Truro Homeowners Association, who had approved the design, had been met, and the nine required standards for a variance had been satisfied. Ms. Grant-Goodman said the house was located off center on an irregularly shaped lot, which was very wide at the front and narrow at the rear, and the only suitable location for the family room addition was at the back of the kitchen where there currently were large sliding glass doors leading to a deck, part of which would be replaced by the addition. She said the hardship regarding the lot shape, position of the house, house model, and prior extensive interior renovations, which made the house unique, was not shared by other properties in the area. She presented drawings reflecting side and rear views of the proposed addition and noted that letters of support had been submitted. Ms. Grant-Goodman stated that the granting of the variance would not have a negative impact on the adjacent properties, would not change the character of the zoning district, would be in harmony with the intended spirit and purposes of the Ordinance, and would not be contrary to the public interest.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-BR-092 for the reasons stated in the Resolution.

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~ ~ ~ July 29, 2003, ANDREW L. A. GOODMAN AND CATHIE GRANT-GOODMAN, VC 2003-BR-092, continued from Page 663

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

ANDREW L. A. GOODMAN AND CATHIE GRANT-GOODMAN, VC 2003-BR-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. and eave 3.0 ft. from side lot line. Located at 4211 Elizabeth La. on approx. 12,184 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((12)) 70. 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 29, 2003; 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. The lot is irregularly shaped with wide frontage and tapers to a narrow width at the rear of the property.
4. The dwelling is located off center and closer to the southern property line which necessitates the variance.
5. The homeowners association, the Architectural Review Board, and the surrounding neighbors have endorsed the application.
6. The adjacent parcel to the south is an unbuildable outlot; therefore, there is no 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:



~ ~ ~ July 29, 2003, ANDREW L. A. GOODMAN AND CATHIE GRANT-GOODMAN, VC 2003-BR-092, continued from Page 664

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 M. French III, dated July 26, 1995, revised May 6, 2003, 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. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August, 6 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M.      DANA BROTMAN & MICHAEL KRASS, VC 2003-PR-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. and eave 8.0 ft. from side lot line. Located at 3415 Executive Ave. on approx. 25,510 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (G) 12A.

The applicants were not present when Chairman DiGiulian called the case, and he announced that the case would be re-called later in the meeting.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M.      ERIC & MONICA CLEARY, VC 2003-PR-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.3 ft. from side lot line and accessory structure to exceed 200 sq. ft. in size and remain 6.2 ft. from side lot line. Located at 3025 Fenwick Rd. on approx. 14,248 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((15)) 176 and 176A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Monica Cleary, 3025 Fenwick Road, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 3.3 feet from the side lot line and an accessory storage structure of approximately 395 square feet to remain 6.2 feet from the side lot line. The Zoning Ordinance permits accessory storage structures of up to 200 square feet. A minimum side yard of 10 feet is

required; therefore, variances of 6.7 feet and 3.8 feet, respectively, were requested.

Ms. Cleary presented the variance request as outlined in the statement of justification submitted with the application. She said her home was one of three in the community that was a rambler with two bedrooms, and with two children, she needed more space. She explained that adding a second story was not feasible or cost effective, and she wanted to locate an addition to the side. She stated that she shared a concrete driveway with an adjacent neighbor on one side, and the proposed location was the only place to locate the addition. Ms. Cleary said the adjacent neighbors on both sides supported the addition, and the house on the adjacent Lot 177 was located approximately 15 to 20 feet from the property line. She stated that the storage structure was acquired from Fairfax County Water Authority in approximately 1997 or 1998 when the pumping station for Fenwick Park was closed down.

Mr. Hammack asked whether the storage structure was located on the applicants' property or whether it was relocated to their property. Ms. Cleary replied that it had been located on the property. She explained that a portion of her property had been taken in the 1950s for the pumping station, and when the pumping station was closed, the portion that had been taken was returned.

Mr. Hammack commented that he felt the proposed location of the addition was too close to the side lot line, and he asked whether the applicants could relocate the addition farther away from the side lot line and still construct what they needed. Ms. Cleary replied that they could.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2003-PR-088 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC & MONICA CLEARY, VC 2003-PR-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.3 ft. from side lot line and accessory structure to exceed 200 sq. ft. in size and remain 6.2 ft. from side lot line. **(THE BOARD APPROVED THE ADDITION 4.0 FEET FROM THE SIDE LOT LINE)** Located at 3025 Fenwick Rd. on approx. 14,248 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((15)) 176 and 176A. 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 29, 2003; 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 narrow; about 60 feet wide.
4. The applicants were trying to add a third bedroom and have done so in a logical manner.
5. The existing accessory structure will not present a problem to anyone and has been there a long time.
6. The addition will not have a 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:

~ ~ ~ July 29, 2003, ERIC & MONICA CLEARY, VC 2003-PR-088, continued from Page 666

- A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
  4. That the strict application of this Ordinance would produce undue hardship.
  5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
  6. That:
    - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
    - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
  7. That authorization of the variance will not be of substantial detriment to adjacent property.
  8. That the character of the zoning district will not be changed by the granting of the variance.
  9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 and accessory storage structure, as shown on the plat prepared by Bryant L. Robinson, dated February 24, 2003, 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 proposed addition shall be no closer than 4.0 feet to the side lot line.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. GIANG T. & OANH H. NGUYEN, VC 2003-MA-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.4 ft. and eave 11.2 ft. from side lot line and fences greater than 4.0 ft. in height to remain in front yard. Located at 3534 Pinetree Terr. on approx. 23,700 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-4 ((2)) 804. (Concurrent with SP 2003-MA-024).

9:00 A.M. MR. GIANG T. NGUYEN, SP 2003-MA-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 accessory structure to remain 4.4 ft. from side lot line. Located at 3534 Pinetree Terr. on approx. 23,700 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-4 ((2)) 804. (Concurrent with VC 2003-MA-090).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pat Divito, 6333 Beachway Drive, Falls Church, Virginia, the applicant's agent/architect, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on error in building location to permit a shed to remain 4.4 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a reduction of 10.6 feet was requested. The applicants also requested a variance to permit the enclosure of an existing carport 13.4 feet with an eave 11.2 feet from the side lot line and fences of 6.5 feet in height and 7.2 feet in height to remain in the front yard. Eaves are permitted to extend 3.0 feet into the minimum side yard; and the maximum fence height permitted in a front yard is 4.0 feet; therefore, variances of 1.6 feet, 0.8 feet, 2.5 feet, and 3.2 feet, respectively, were requested.

Ms. Gibb noted that in the statement of justification there was a reference to an error in building location with respect the front corner of the house, and she asked whether that was being addressed. Mr. Sherman replied that the applicants had received an administrative variance for the front left corner of the house.

Mr. Divito presented the variance and special permit requests as outlined in the statement of justification submitted with the application. He stated that the house was more than 40 years old and had no changes other than landscaping and flagstone approaches. He explained that the applicants wanted to convert an existing carport into a garage with no change to the roof structure. He said the eave for which the variance was being requested was an existing eave. Mr. Divito stated that the conditions for which the corrective variances were being requested had existed for 40 years with no changes and were raised during the plat preparation for the garage conversion.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 2003-MA-090 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GIANG T. & OANH H. NGUYEN, VC 2003-MA-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.4 ft. and eave 11.2 ft. from side lot line and fences greater than 4.0 ft. in height to remain in front yard. Located at 3534 Pinetree Terr. on approx. 23,700 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-4 ((2)) 804. (Concurrent with SP 2003-MA-024). 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 29, 2003; and

WHEREAS, the Board has made the following findings of fact:

~ ~ ~ July 29, 2003, GIANG T. & OANH H. NGUYEN, VC 2003-MA-090, and MR. GIANG T. NGUYEN, SP 2003-MA-024, continued from Page 668

1. The applicants are the owners of the land.
2. The applicants' statement of justification explains the situation.
3. The house is 40 years old and the applicants were adding a garage where a carport currently exists.
4. The fence looks as if it is part of the house, does not impact the surrounding properties and is architecturally compatible with the dwelling.
5. The lot is oddly shaped.
6. The request is to enclose an existing carport.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage with eave, and fences, as shown on the plat prepared by David L. Mayne, dated March 3, 2003, revised through May 30, 2003, 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

~ ~ ~ July 29, 2003, GIANG T. & OANH H. NGUYEN, VC 2003-MA-090, and MR. GIANG T. NGUYEN, SP 2003-MA-024, continued from Page 669

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve SP 2003-MA-024 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MR. GIANG T. NGUYEN, SP 2003-MA-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 accessory structure to remain 4.4 ft. from side lot line. Located at 3534 Pinetree Terr. on approx. 23,700 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-4 ((2)) 804. (Concurrent with VC 2003-MA-090). 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 29, 2003; 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

~ ~ ~ July 29, 2003, GIANG T. & OANH H. NGUYEN, VC 2003-MA-090, and MR. GIANG T. NGUYEN, SP 2003-MA-024, continued from Page 670

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 David L. Mayne, dated March 3, 2003, revised through May 5, 2003, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-mentioned conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. JOHN E. LINK, TRUSTEE AND KATHRYNE A. LINK, TRUSTEE, VC 2003-MV-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. and eave 2.5 ft. from side lot line. Located at 11808 Mallard Rd. on approx. 37,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-2 ((2)) 74. (Def from 6/10/03 7/1/03 and 7/15/03 for decision only)

Chairman DiGiulian noted that on July 22, 2003, the Board had issued an intent to defer VC 2003-MV-047 to September 9, 2003.

Mr. Ribble moved to defer decision on VC 2003-MV-047 to September 9, 2003, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. DILLIAN LAFFERTY, VC 2003-BR-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.8 ft. from rear lot line. Located at 9811 Dansk Ct. on approx. 10,679 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-1 ((10)) 162.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dillian Lafferty, 9811 Dansk Court, Fairfax, Virginia, replied that it was.

Mavis Stanfield, 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 to be located 12.8 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 12.2 feet was requested.

Mr. Lafferty presented the variance request as outlined in the statement of justification submitted with the application. He said the proposed addition would include a first floor bedroom and a full handicapped accessible bathroom to accommodate Mrs. Lafferty's mother, Kay Keener, who was a permanently disabled

household member and physically incapable of living by herself. He presented a preliminary sketch of the addition. He noted that nine letters of support had been submitted, including one from the Migliores, the owners of the property directly behind the subject property which shared the rear lot line from which the variance was being requested. Mr. Lafferty said he was perplexed as to why the Gubas, who had been their neighbors for 19 years, had submitted a letter of opposition to the Board without approaching them directly regarding their concerns so they could be timely addressed. He said that timing was important because Ms. Keener's mobility was becoming increasingly limited from progressive supranuclear palsy, which would ultimately result in her being wheelchair and bedridden, and there was currently no bathroom accessible to a wheelchair. Mr. Lafferty said that he disagreed with the statement in Ms. Guba's letter that the granting of a variance would provide a special privilege or convenience. He said it was a necessity if they were to stay in their home of 19 years.

Mr. Lafferty explained that he had initiated conversations with Mr. Guba on three occasions during the prior four months, discussed the addition plans, and indicated the intent to address the joint drainage problem in the back yard as part of the planned addition. He said the only comment or suggestion he received from Mr. Guba was that the selected architect would need to bring a civil engineer to complete the grading plan. Once he had received a copy of Ms. Guba's letter, Mr. Lafferty said he again spoke with Mr. Guba, who was a county civil engineer, and asked for his suggestions of how an adequate structure could be built within the zoning restrictions, and Mr. Guba had replied that he had no idea how it could be done. Mr. Lafferty said he had consulted two architects regarding the possibilities and found that the requested variance was the only workable solution. He noted that there was a sanitary sewer easement and a stairwell that prevented building on the north side, and the unusual shape of the rear yard restricted what could be built without a variance. He said he agreed with Ms. Guba that the issue of the unsatisfactory drainage needed to be resolved, and he had agreed to the condition of adding a grading plan as a requirement. Mr. Lafferty said they were willing to accept the six-foot board-on-board privacy fence along the common property line with the Gubas to replace the current split-rail fence even though it would go further to restrict the view from the Gubas' property line than the addition itself. In regard to Ms. Guba's objection that the addition would block her view of the Laffertys' yard, Mr. Lafferty noted that the requested variance was not along the property line shared with the Gubas, and any addition to the back of the house would obstruct the Gubas' view of his yard. He stated that the addition would be architecturally pleasing and compatible with the existing house and neighborhood, and a strict application of the Zoning Ordinance would place an undue hardship on his family.

Mr. Hammack asked whether there was any way the applicants could reduce the depth of the room to avoid cutting off the neighbor's sightlines to some extent. He noted that the sketch reflected two chairs, a table, and some other things that looked like it could be a convenience. Mr. Lafferty replied that they needed a wheelchair accessible room, which Ms. Keener would soon be living in 24 hours a day, with room for visitors and themselves to spend time with her. He stated that Ms. Keener was physically limited, but had an active mind, and he did not want to put her in a closet.

Kathryn Lafferty, 9811 Dansk Court, Fairfax, Virginia, came forward to speak. She said that reducing the size a foot or two would not significantly improve the Gubas' view. She stated that the Gubas would have to be outside in their yard to see the addition and would not see it from inside their house.

Mr. Lafferty presented photographs depicting the views from their house and the Gubas' house and indicated that the view would not be appreciably changed with the addition.

Chairman DiGiulian called for speakers.

Sue Goldrosen, 9813 Dansk Court, Fairfax, Virginia, came forward to speak in support of the application. She stated that the proposed attractive addition would not be seen from the street, was in keeping with the neighborhood, and would add to the property value in the area. She said the addition was necessary for the applicants, and the need to care for elderly parents was a growing need. She stated that the applicants had been forthright in discussing their needs and plans.

Dorothy Guba, 9809 Dansk Court, Fairfax, Virginia, came forward to speak in opposition to the application. She stated that she was the original property owner of the property which would be directly impacted by the proposed construction of a 20-foot-by-25-foot extension that did not meet the required standards for granting a variance. She said an addition approximating the proposed area could be built by incorporating a portion of the existing structure without extending the structure into the rear setback. Ms. Guba stated that a strict



~ ~ ~ July 29, 2003, DILLIAN LAFFERTY, VC 2003-BR-083, continued from Page 672

application of the Zoning Ordinance would not produce undue hardship or unreasonably restrict reasonable use of the property, and the granting of the variance would be a special privilege and a convenience. She said the resulting additional impervious surface that would exacerbate current unsatisfactory drainage conditions needed to be addressed. She requested conditions for providing a privacy fence and a drainage covenant away from her property. Ms. Guba stated that the bulk and mass of the proposed structure would dominate the view from her property and was not in keeping with the original design intent of the subdivision. She said the addition would be a substantial permanent detriment to her property that would impact the resale. She stated that the applicants had not met with them to explain the proposed addition.

Howard Guba, 9809 Dansk Court, Fairfax, Virginia, came forward to speak in opposition to the application. He said the proposed structure was not in harmony with the community and was a radical departure from the rest of the subdivision. He stated that there were no other extensions to original homes of the proposed magnitude. Mr. Guba said the variance granted at 4501 Demby Drive that was noted in the staff report should not be used as precedence because it was located at the end of a cul-de-sac with wide distances from adjacent homes and backed to a cemetery buffer. He presented a photograph of that property and stated that the adjacent property owners were not affected. He said the proposed addition would be detrimental to his property and was not in conformance with the overall design of the subdivision. Mr. Guba indicated an alternative smaller configuration on a drawing with which they would be agreeable.

Mr. Hammack asked Mr. Guba to indicate on the plat the location of his property and explain what features he had to the rear of his property. Mr. Guba complied and said he had a deck four feet in height and a patio.

Mr. Lafferty, in his rebuttal, explained that the alternative design proposed by Mr. Guba would reduce four feet of the depth, would result in a bathroom that would not be usable, and would not improve their view. Ms. Lafferty stated that there were two other properties in the neighborhood with similar size additions that were the same model homes as theirs, which did not require variances due to their lot configurations.

Mr. Hart asked whether the applicants had an elevation drawing which would depict the side of the addition that would be viewed from the Gubas' property. Mr. and Ms. Lafferty indicated that they did not. They said they had preliminary discussions with an architect, and it would be a one-story addition off the garage with siding to match the existing structure, but decisions regarding windows and other details had not yet been made.

A brief discussion ensued between the applicants, Mr. Hart, and Mr. Hammack regarding the design of the existing and proposed structures.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 2003-BR-083. He said there was some argument to be made for a variance because of the converging rear lot lines, but the extension beyond the setback lines had an impact on the adjacent neighbors, the Gubas. He said he was concerned about the proposed height, and notwithstanding the advice of the architects not to get them involved until the variance was obtained, the room as proposed could be reduced in its depth and reconfigured slightly so the impact on the Gubas was reduced and still allowed an adequate space. He said he was sympathetic regarding the need to move the four-foot doors, but the proposed size of the addition without details regarding the roofline and windows had an impact. He said there was some convenience built into the configuration of the room, and he could not support the proposal as presented.

Ms. Gibb seconded the motion, which failed by a vote of 2-3. Chairman DiGiulian, Mr. Ribble, and Mr. Hart voted against the motion. Mr. Pammel was not present for the vote. Mr. Beard was absent from the meeting.

Mr. Hart said he thought getting an architect involved might help resolve some of the design problems. With the bowtie shape of the back yard and the odd building envelope, he said the applicants would be entitled to some relief, but the room could be reconfigured. He suggested the decision be deferred so that the applicants could work with the constraints and come up with something that did not stick out 25 feet, but still worked on the lot and accommodated a handicapped bathroom and bedroom.

Mr. Hammack stated that he had no objection to the deferral.

~ ~ ~ July 29, 2003, DILLIAN LAFFERTY, VC 2003-BR-083, continued from Page 673

Ms. Gibb stated that she would support the deferral. She said the applicants were entitled to something, and an architect could help by utilizing some of the existing interior of the house.

A brief discussion ensued regarding the length of time required for the applicants to consult with an architect.

Mr. Hart moved to defer decision on VC 2003-BR-083 to September 16, 2003, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. ELLEN S. SUAREZ & BRENT J. OBENOUR, VC 2003-MA-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 0.0 ft. from side lot line. Located at 6302 Beachway Dr. on approx. 19,366 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 1033.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brent Obenour, 6302 Beachway Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of carport to be located 0.0 feet from a side lot line. A minimum side yard of 15 feet is required; however, carports are permitted to extend 5.0 feet into the minimum side yard; therefore, a variance of 10 feet was requested.

Ellen Suarez, 6302 Beachway Drive, Falls Church, Virginia, presented the variance request as outlined in the statement of justification submitted with the application. She explained that she had resided at the property for 13 years and had previously received a permit for a garage located to the back of the property so she could maneuver her previous husband's wheelchair from the car to the house before his death. She said there was not enough room to get two cars into the garage, which was currently being used for storage, and she wanted to extend the roof from the existing garage to allow for covered parking for her and her current husband's vehicles. She said she agreed with the neighbors' letters regarding the current condition of the property, and she and her husband were taking out a loan to get the house up to a higher standard. Mr. Obenour added that it would include the removal of the gravel and paving of the driveway, but the first step was to determine what to do with the parking area.

Mr. Hart asked the applicants to clarify whether the problem with the use of the garage for two vehicles was the lack of room to make a 90-degree turn to get the vehicles in, which Ms. Suarez confirmed.

Mr. Hart asked what the one-car garage in the front and the garage in the back were used for and for further explanation regarding the proposed carport. Ms. Suarez explained that she intended to move her husband's office from its current location in the living and dining rooms into a room downstairs and then turn the one-car garage into a bedroom for their nanny, which did not require a variance. She said the garage in back was being used for storage by default because they were unable to get two vehicles into it. She explained that the proposed carport would be for two vehicles and would consist of four posts and a roof with no eave to cover the area where they were currently parking their vehicles. She confirmed that it would be trapezoidal in shape and located on the left lot line.

Mr. Hart asked whether the applicants had considered moving the carport further forward to an area unconnected to the garage. Ms. Suarez replied that they had considered moving it to an area beside the garage, but thought it would be less attractive, with which their architect agreed. She said that although it would also be inconvenient to get to the back with groceries, she would consider pulling the two-car carport up to the front of the house.

Mr. Hart commented that he had concerns about the carport being located on the property line and asked whether they had considered a longer one-car wide carport. Ms. Suarez replied that they had not because they needed two parking spots. A brief discussion ensued regarding whether there would be room to exit the

~ ~ ~ July 29, 2003, ELLEN S. SUAREZ & BRENT J. OBENOUR, VC 2003-MA-085, continued from Page 674

vehicle parked next to the lot line and whether a railing would be needed next to the Fairfax County sewer easement for safety reasons. Ms. Suarez said the carport would be located down from the narrow point, and there would be a railing.

Mr. Hart asked who the owner of the property to the side of the proposed carport was and what their position was about the request. Ms. Suarez explained that her neighbors had built their fence inside their property line, and she had maintained the portion of the neighbors' property to the left of the fence for 13 years. She said she had never spoken to them in the 13 years she had lived there, but understood they did not want it and thought it would be a detriment.

Chairman DiGiulian called for speakers.

Mary Gervais, 6304 Beachway Drive, Falls Church, Virginia, came forward to speak in opposition to the application. She stated that she had been overseas most of the time since Ms. Suarez bought the house, and she was upset when Ms. Suarez put the sand and wood against the fence, after which she could not maintain the outside of the fence. She said she was upset that they had built a structure from which they could view her patio and reduced her privacy. Ms. Gervais said the existing garage was usable and had been used in the past, and the applicants were currently parking their vehicles on the property line in the front lawn. She said the chain-link fence was built by previous owners. She said she had tenants in the house for the prior several years, and her lawn man maintained the drain to avoid flooding of their house. Ms. Gervais stated that there was a restrictive covenant in Lake Barcroft that required a 10-foot wide strip of land along side lot lines and a 20-foot wide strip of land along the rear lot lines.

Marie Gervais, 6304 Beachway Drive, Falls Church, Virginia, came forward to speak in opposition to the application. She stated that the additions to other houses noted in the statement of justification were not 0.0 feet from the property line. She said the applicants' existing two-car garage addition was elevated and overlooked the principal outdoor living spaces and patio of her mother's house, and the proposed carport would be a visible privacy encroachment. With regard to the applicants' statement that their driveway was unusually steep, Ms. Gervais stated that many of the other adjacent properties had much steeper driveways. She said that even if the two-car garage had only one usable space, if combined with the one-car garage built in 1957, there would be two spaces.

Mr. Hart asked for clarification regarding the differences in dimensions between the plat and the architect's drawing. Ms. Stanfield replied that she had not discussed it with the applicants, and they would be better able to address the question.

Richard Werling, 6308 Beachway Drive, Falls Church, Virginia, came forward to speak in opposition to the application. He stated that he had lived on his property for 29 years and that the Lake Barcroft restrictive covenant would not be followed if the variance was granted.

Ms. Suarez, in her rebuttal, stated that she had spoken with Ms. Gervais' husband in 1994 regarding the original addition and why it was being done. In answer to Mr. Hart's earlier question, she said the drawing with the architect's seal and the 18.2 feet and 21.9 feet dimensions was accurate.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that if the Board was to approve the variance, the approval would be conditioned to the plat with the 17.7 feet and 22.9 feet as the variance plat.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to deny VC 2003-MA-085 for the reasons stated in the Resolution.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELLEN S. SUAREZ & BRENT J. OBENOUR, VC 2003-MA-085 Appl. under Sect(s). 18-401 of the Zoning

~ ~ ~ July 29, 2003, ELLEN S. SUAREZ & BRENT J. OBENOUR, VC 2003-MA-085, continued from Page 675

Ordinance to permit construction of a carport 0.0 ft. from side lot line. Located at 6302 Beachway Dr. on approx. 19,366 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 1033. 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 29, 2003; 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 all of the required standards for a variance.
3. The lot is about 100 feet wide with topographic issues that are suffered by many of the lots around Lake Barcroft.
4. The house is oddly positioned on the lot, making any further additions more difficult.
5. The house has a two car garage, although it may be somewhat awkward to use and it also has another one car garage in the front.
6. The placement of the carport at 0.0 feet, in the proximity to the patio next door, and based on the photographs and the record, would create a negative impact for that property.
7. The request is not consistent with the zoning district and the character of the neighborhood and not in harmony with the intended spirit and purpose of the Ordinance.
8. The house already has garage facilities for one car plus two more cars; a carport for two more cars is a convenience rather than an alleviation of a hardship.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

~ ~ ~ July 29, 2003, ELLEN S. SUAREZ & BRENT J. OBENOUR, VC 2003-MA-085, continued from Page 676

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 5-0. Mr. Hart moved to waive the 1-year waiting period for re-filing an application. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote, and Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. CRAIG KIRBY, SP 2003-DR-025 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 7.8 ft. from side lot line and patio 2.7 ft. and addition 19.0 ft. from rear lot line. Located at 5952 Woodacre Ct. on approx. 15,499 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((16)) 42A. (Concurrent with VC 2003-DR-091).

9:00 A.M. CRAIG KIRBY, VC 2003-DR-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. and eave 1.0 ft. from side lot lines. Located at 5952 Woodacre Ct. on approx. 15,499 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((16)) 42A. (Concurrent with SP 2003-DR-025).

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 Kirby, 5952 Woodacre Court, McLean, Virginia, replied that it was.

Mavis Stanfield, Senior 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 shed to remain 7.8 feet from the western side lot line, a patio to remain 2.7 feet from the rear lot line, and a screened porch to remain 19 feet from the rear lot line. A minimum side yard of 15 feet and minimum rear yard of 25 feet are required; however, patios are permitted to extend 20 feet into the minimum rear yard, but may not be closer than 5.0 feet from the rear lot line; therefore, modifications of 7.2 feet, 2.3 feet, and 6.0 feet, respectively, were requested. The applicant also requested a variance to permit the construction of a detached garage to be located 2.0 feet with an eave 1.0 foot from the side lot line. Eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 13 feet and 11 feet, respectively, were requested. Ms. Stanfield noted that the applicant had indicated to staff that he wanted to enclose the screened porch, and because the resolution stated that it was for an addition, it would cover that request. She said he also indicated he wanted a second floor on the garage, which would change the height, and the applicant would address the change.

Mr. Kirby presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. He explained that he and his wife had purchased the house with the intent of making renovations and were unaware at the time of the purchase that they would have to obtain a special permit for the existing conditions. He stated that the screened porch was built in 1959 with the original house, although there was no building permit issued. He said he did not want to make the screened porch larger, but wanted to enclose it with walls and windows to make it a four-season room. Mr. Kirby explained that a slightly elevated portion of the brick patio that connected with steps to the main patio was the area that encroached slightly within the five-foot allowable extension of the setback. He stated that the shed had been in the existing location for approximately 40 years, and he did not intend to make any changes to the shed. He said there was no detriment to the use and enjoyment of other properties in the immediate vicinity. He reported that he had contacted the ten neighbors to whom notices were sent, and none had any objections to the special permit and variance requests. If the conditions had to be removed, he said it would place an

~ ~ ~ July 29, 2003, CRAIG KIRBY, SP 2003-DR-025 and VC 2003-DR-091, continued from Page 677

unreasonable hardship on him and would significantly decrease the property value.

Mr. Kirby said he wanted to convert his existing carport into a playroom for his children due to a radon problem, and the partial basement was not an option for that purpose. Due to the exceptional shape of the lot, he said that any addition to the house would require a variance. He said the location for the detached garage was selected because it provided a safe and practical ingress and egress. Mr. Kirby requested a garage height of 22 feet because it would allow the potential to convert the area above the garage into a study to free up a bedroom for his grandmother in the future. He stated that all the abutting neighbors had signed a petition in support of the variance request. He said the garage would be screened by a bamboo forest and a neighbor's shed on one side and a row of mature Leland (phonetic) cypress trees on another side, and it would not be visible. Mr. Kirby stated that two feet would be sufficient to maintain the garage, which would be designed by an architect and would be consistent with his and his neighbors' properties. He said the property was characterized by an exceptional shape in that the rear and side yard property lines were too close to the house to permit an attached or detached garage that had a safe and reasonable ingress and egress without obtaining a variance. He stated that the condition of the property due to the radon problem and the lot configuration was not of a generally recurring nature making it unreasonable for the Board to approve the request. Mr. Kirby said that every other property in the neighborhood had a garage, and not having one created an undue hardship on him and hurt the economic value of the property.

Mr. Hart asked what the proposed garage would be made of, how it would be maintained, and if it would have gutters. Mr. Kirby replied that it would be siding and windows. He said he would use vinyl trim so it would not require periodic painting, and it would have gutters.

Mr. Hart said he was concerned that with the garage located two feet from the property line with the eave at one foot, it would be difficult to maintain, and he asked whether there was a reason it could not be moved a few more feet from the property line. Mr. Kirby replied that the reason it was located close to the corner was to avoid difficulties backing out from the left side of the garage. A brief discussion ensued regarding alternative locations for the garage and their drawbacks. Mr. Kirby added that the gutters could be cleaned out by using a ladder located on the house side of the garage.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb asked staff to confirm that a special permit for an error in building location would apply to the enclosed porch even though it was currently screened and the enclosure did not yet exist. Ms. Stanfield replied that because it was advertised for an addition, it had been properly advertised.

Ms. Gibb moved to approve SP 2003-DR-025 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG KIRBY, SP 2003-DR-025 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 7.8 ft. from side lot line and patio 2.7 ft. and addition 19.0 ft. from rear lot line. Located at 5952 Woodacre Ct. on approx. 15,499 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((16)) 42A. (Concurrent with VC 2003-DR-091). 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 29, 2003; 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

~ ~ ~ July 29, 2003, CRAIG KIRBY, SP 2003-DR-025 and VC 2003-DR-091, continued from Page 678

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, patio and addition, as shown on the plat prepared by Bryant L. Robinson, dated May 16, 2003, 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 4-0. Chairman DiGiulian and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to deny VC 2003-DR-091 for the reasons stated in the Resolution. Mr. Hammack seconded the motion and stated that when there already was a carport or a location where cars could be parked and a person wanted to convert it and put up another structure, it raised some of the issues of being a convenience, and under the hardship requirements, there was strict criteria that must be met. He said the additional height on the garage concerned him because the impact on the neighbor should be as minimal as possible, and a two-story garage increased the bulk and made it more difficult to maintain. He said he would support the motion.

Mr. Hart stated that he would support the motion. He said he could have supported some relief if the garage was four or five feet from the property line, but even if it were possible not to paint and to clean the gutters in

~ ~ ~ July 29, 2003, CRAIG KIRBY, SP 2003-DR-025 and VC 2003-DR-091, continued from Page 679

some other way, there were other things like bird nests and wasps that one might have to attend to in the two feet that was not enough area to maneuver in, and the neighbors may choose to remove the bamboo.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG KIRBY, VC 2003-DR-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. and eave 1.0 ft. from side lot lines. Located at 5952 Woodacre Ct. on approx. 15,499 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((16)) 42A. (Concurrent with SP 2003-DR-025). 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 29, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not met the required standards for a variance.
3. The authorization of the variance will be of substantial detriment to adjacent property.
4. The variance request was not in harmony with the intended spirit and purpose of this Ordinance.

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



~ ~ ~ July 29, 2003, CRAIG KIRBY, SP 2003-DR-025 and VC 2003-DR-091, continued from Page 680

strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion, which carried by a vote of 4-0. Ms. Gibb moved to waive the 1-year waiting period for re-filing an application. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Chairman DiGiulian and Mr. Pammel were not present for the votes. Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003.

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Mr. Kirby asked the Board to discuss and consider whether keeping the garage at one-story height and locating it four feet from the lot lines would address the Board's concerns. Vice Chairman Ribble advised the applicant that a request for reconsideration would be required to do so.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. GREGORY J. ROMAIN, VCA 98-M-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 98-M-098 to permit construction of addition 12.6 ft. from side lot line and existing structure to remain 12.6 ft. from side lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Concurrent with SPA 98-M-045).

9:00 A.M. GREGORY J. ROMAIN, SPA 98-M-045 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 7.8 ft. from side lot line and 5.5 ft. from rear lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Concurrent with VCA 98-M-098).

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 J. Romain, 7219 Calvert Street, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior 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 shed to remain 7.8 feet from the western side lot line and 5.5 feet from the rear lot line. A minimum side yard of 20 feet and a minimum rear yard equal to the height of the shed, which was 9.5 feet, are required; therefore, modifications of 12.2 feet for the side lot line and 4.0 feet for the rear yard were requested. The applicant also requested a variance to permit the construction of a two-story addition to be located 12.6 feet from the side lot line and to allow the existing dwelling to remain 12.6 feet from the side lot line. Variances of 7.4 feet were requested for both the addition and the existing dwelling.

Mr. Hart asked whether there was any resource protection area associated with the stream shown on the plat. Ms. Stanfield replied that staff was not aware of any.

Mr. Romain presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. He said the shed was located at the far end of the property where there were no homes, similar to the placement of the sheds on most of the adjacent properties. He stated that the shed was placed in the selected location based on the location of a manhole and trees to allow maintenance crews periodic access. Mr. Romain said his dwelling was built in 1957, and in order for their family of five or potentially six, if his mother resided with them in the future, to live comfortably in the dwelling, the proposed addition was required to change a rambler into a colonial home. He explained that he had previously applied for and had been granted a variance to build a two-car garage, which at the time was all he could financially

~ ~ ~ July 29, 2003, GREGORY J. ROMAIN, VCA 98-M-098 and SPA 98-M-045, continued from Page 681

do, and since that time had left the military and found other employment, which currently was allowing him to enlarge his home as had been done with many of the other homes in the area.

Mr. Hammack asked whether the shed, which appeared to be sitting on cinderblocks, could be easily moved and brought into compliance. Mr. Romain replied that the shed had sunk and the bricks were placed under the foundation to shore it up. He said they had initially selected the location to keep the yard as part of the open park area with no fences like the rest of the owners in Annandale Acres had done.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 98-M-045 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGORY J. ROMAIN, SPA 98-M-045 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 7.8 ft. from side lot line and 5.5 ft. from rear lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Concurrent with VCA 98-M-098). 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 29, 2003; 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.

~ ~ ~ July 29, 2003, GREGORY J. ROMAIN, VCA 98-M-098 and SPA 98-M-045, continued from Page 682

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 Bryant L. Robinson, dated February 24, 2003, 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 4-0. Mr. Ribble and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to approve VCA 98-M-098 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGORY J. ROMAIN, VCA 98-M-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 98-M-098 to permit construction of addition 12.6 ft. from side lot line and existing structure to remain 12.6 ft. from side lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Concurrent with SPA 98-M-045). 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 29, 2003; 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.
4. The additions are to the existing structure and do not impact more than what was originally constructed.
5. The character of the zoning district will not be changed.
6. The requests will not be detrimental to adjacent properties.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;

~ ~ ~ July 29, 2003, GREGORY J. ROMAIN, VCA 98-M-098 and SPA 98-M-045, continued from Page 683

- C. Exceptional size at the time of the effective date of the Ordinance;
- D. Exceptional shape at the time of the effective date of the Ordinance;
- E. Exceptional topographic conditions;
- F. An extraordinary situation or condition of the subject property, or
- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 the existing dwelling, as shown on the plat prepared by Bryant L. Robinson, dated February 24, 2003, 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.

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 29, 2003, Scheduled case of:

9:00 A.M. DANA BROTMAN & MICHAEL KRASS, VC 2003-PR-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. and eave 8.0 ft. from side lot line. Located at 3415 Executive Ave. on approx. 25,510 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (G) 12A.

~ ~ ~ July 29, 2003, DANA BROTMAN & MICHAEL KRASS, VC 2003-PR-089, continued from Page 684

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 Brotman, 3415 Executive Avenue, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction to enclose an existing carport 10 feet with eave 8.0 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 2.0 feet and 1.0 foot, respectively, were requested.

Ms. Brotman presented the variance request as outlined in the statement of justification submitted with the application. She stated that she wanted to enclose the carport of her small home, which was located on a narrow lot, for expansion purposes. She said her home was one of a few homes in the neighborhood who had not previously done so. She explained that the lot extended back, but where the house was located parallel to the road was the narrowest point.

Chairman DiGiulian asked whether the enclosure would be closer to the side lot line than the existing carport, to which Ms. Brotman replied that there would be no extension beyond the carport.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2003-PR-089 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANA BROTMAN & MICHAEL KRASS, VC 2003-PR-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. and eave 8.0 ft. from side lot line. Located at 3415 Executive Ave. on approx. 25,510 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (G) 12A. 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 29, 2003; 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 extremely narrow.
4. The request is to enclose an existing carport which was in keeping with the neighborhood.
5. The variance request is minimal and will cause no negative impact on 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 a carport enclosure, as shown on the plat prepared by Scott W. Sterl, dated February 28, 2003, revised May 19, 2003, 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 4-0. Mr. Pammel and Mr. Ribble were not present for the vote. Mr. Beard was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ July 29, 2003, After Agenda Item:

Request for Additional Time  
Holy Transfiguration Church, SPA 80-D-069-2

Mr. Hammack asked whether 120 days was reasonable in light of the reference in the justification to a site plan. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it depended on how far along they were on their site plan.

~ ~ ~ July 29, 2003, AFTER AGENDA ITEMS, continued from Page 686

Ms. Gibb asked whether there had been a previous extension. Mr. Hammack said he thought it had been extended several times. Ms. Langdon confirmed that there had been several previous additional time extensions for short time periods.

Mr. Hammack moved to approve 120 days of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting. The new expiration date was October 13, 2003.

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~ ~ ~ July 29, 2003, After Agenda Item:

Request for Additional Time  
Chang S. and Chung S. Kim, SPA 94-S-033

Mr. Hart moved to approve 12 months of Additional Time as recommended by staff. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting. The new expiration date was June 19, 2004.

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~ ~ ~ July 29, 2003, After Agenda Item:

Approval of October 8, 2002 Minutes

Mr. Hammack moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ July 29, 2003, After Agenda Item:

Approval of December 3, 2002 Minutes

Mr. Hammack moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ July 29, 2003, After Agenda Item:

Approval of July 22, 2003 Resolutions

Mr. Hammack moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel were not present for the vote. Mr. Beard was absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Kathleen A. Knoth

Approved on: April 5, 2005

  
Regina Thorn Corbett, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Vice Chairman, for  
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, August 5, 2003. The following Board Members were present: John DiGiulian; Paul Hammack; James Hart; Robert Kelley; James Pammel; and John Ribble. Ms. 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.

~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:00 A.M. BOARD OF SUPERVISORS/DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, VC 2003-MV-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. from front lot line of a corner lot. Located at 8819 Holland Rd. on approx. 4.57 ac. of land zoned C-3. Mt. Vernon District. Tax Map 102-1 ((1)) pt. 4. (In association with SEA 82-V-012-4 and 2232-V03-5). (Moved from 6/10/03 per appl req.) (moved from 7-29-03 for notices)

Mr. Ribble made a disclosure that he had recently been appointed to the INOVA Health Board Systems.

Mr. Beard made a disclosure that he was a member of the INOVA Alexandria Hospital Foundation.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Roxanne Tomlinson, Department of Public Works and Environmental Services, replied that it was.

Lindsey Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of an addition 19.5 feet from the front lot line on Tiswell Drive. A minimum front yard of 40 feet is required; therefore, a variance of 20.5 feet was requested. The variance was being requested concurrently with a Special Exception Amendment to allow building and additional site modifications to a medical care facility in the C-3 District. The Planning Commission recommended approval of the application at their July 24, 2003 hearing. The application was scheduled to go to the Board of Supervisors on September 15, 2003. The applicant was requesting an extension of the standard 30-month expiration period for a variance.

Ms. Tomlinson presented the variance request as outlined in the statement of justification submitted with the application. She said the project had not yet been funded for construction or design which was the reason for the extended expiration date. She stated that the project was the Community Services Board's number one priority for funding, and they would like to get all of the zoning issues taken care of while they were seeking funding. Ms. Tomlinson said a Special Exception Amendment was recently approved, and the next step was the variance. She stated that they had completed a feasibility study which provided them a programming and schematic plan for the project, and the plan provided was the result of that work. Ms. Tomlinson said the history of the development and the funding was complex, but the facility was currently being operated under the authority of the Board of Supervisors and was considered a public use.

Ms. Tomlinson explained that when the project was originally developed, it was done prior to the installation of Tiswell Drive. She stated that when they were designing the project, they were aware they had two front yards, a side yard, and a rear yard and then found they had three front yards, which caused the need for a variance. She said the approved program dictated a 15,000-square-foot addition to the existing building, and they had tried to keep the character of the site the same. Ms. Tomlinson said the logical place for the addition was on the Tiswell Drive side of the property. She said the architect was continuing the courtyard theme to provide natural light to all of the current and proposed offices. Ms. Tomlinson stated that the addition was seen mainly from the east side, across from the medical offices on Tiswell Drive. She said the residential side of the property would remain as it currently was.

Ms. Tomlinson asked that the landscaping and barrier requirements be modified to keep the current neighborhood as it was. She stated that they proposed to add landscaping to the maximum extent possible and to alleviate the barrier requirements. Ms. Tomlinson explained that the site did not have quantity or quality water control, and they intended to improve those issues with the project. She said the facility used public transportation regularly, and they would be adding a bus shelter on Tiswell Drive.

There were no speakers, and Chairman DiGiulian closed the public hearing.

~ ~ ~ August 5, 2003, BOARD OF SUPERVISORS/DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, VC 2003-MV-057, continued from Page 689

Mr. Hammack moved to approve VC 2003-MV-057 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BOARD OF SUPERVISORS/DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, VC 2003-MV-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. from front lot line of a corner lot. Located at 8819 Holland Rd. on approx. 4.57 ac. of land zoned C-3. Mt. Vernon District. Tax Map 102-1 ((1)) pt. 4. (In association with SEA 82-V-012-4 and 2232-V03-5). (Moved from 6/10/03 per appl req.) (moved from 7-29-03 for notices.) 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 5, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have satisfied the nine required standards for a variance.
3. The lot has three front yards.
4. Tiswell Drive did not exist at the time the original structure was built.
5. Tiswell Drive is concave toward the building which reduces the size of the front yard.
6. The proposed structure is opposite a commercial facility, causing little or no impact on the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will

~ ~ ~ August 5, 2003, BOARD OF SUPERVISORS/DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, VC 2003-MV-057, continued from Page 690

not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Special Exception Amendment/Variance (SEA/VC) Plat entitled "Mount Vernon Mental Health Center", prepared by Greenhorne & O'Mara, Inc., dated October 16, 2002, as revised through June 4, 2003, 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 (60) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 moved to waive the 8-day waiting period. 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 August 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:00 A.M. ALAN K. MELVIN, VC 2003-MV-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.4 ft. and roofed deck 19.1 ft. from front lot line. Located at 8808 Danewood Dr. on approx. 10,742 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((17)) (4) 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. Alan Melvin, 8808 Danewood Drive, Alexandria, Virginia, replied that it was.

Lindsey Shulenberger, Rezoning and Special Exception Branch, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition to add a second story to an existing home 18.4 feet from the front lot line and to permit construction of a roofed deck 19.1 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, variances of 11.6 feet and 10.9 feet, respectively, were requested.

Mr. Melvin presented the variance request as outlined in the statement of justification submitted with the application. He explained that the house was originally constructed in 1935. Mr. Melvin said that at the time the house was built, Danewood Drive did not exist. He stated that his current driveway location was once a service road that accessed the house off Linton Lane. Mr. Melvin stated that they did not meet current setback requirements. He said they had a growing family and were in need of more space. Mr. Melvin stated that their neighborhood was made up of larger homes. He said they wanted to make the house two

~ ~ ~ August 5, 2003, ALAN K. MELVIN, VC 2003-MV-095, continued from Page 691

stories and increase the number of bedrooms and bathrooms. Mr. Melvin said they wanted to build a front porch. He explained that they wanted to keep the style and integrity of the house. Mr. Melvin explained that his house was an American Four Square. He noted that there were other houses of this type in his neighborhood. Mr. Melvin said the houses on his street were predominantly two-story dwellings.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 2003-MV-095 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALAN K. MELVIN, VC 2003-MV-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.4 ft. and roofed deck 19.1 ft. from front lot line. Located at 8808 Danewood Dr. on approx. 10,742 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((17)) (4) 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 August 5, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The dwelling was built prior to the first Zoning Ordinance in Fairfax County.
3. At the time of construction, the dwelling was located a sufficient distance from Linton Lane.
4. Danewood Drive did not exist at the time the dwelling was constructed.
5. The location of the dwelling will be no closer to the front lot line with the additions than it currently is.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

~ ~ ~ August 5, 2003, ALAN K. MELVIN, VC 2003-MV-095, continued from Page 691

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 roofed deck shown on the plat prepared by Sam Whitson, L.S./Land Surveying, dated April 28, 2003, 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. Ribble moved to waive the 8-day waiting period. 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 August 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      LEN W. BEECH, VC 2003-DR-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.5 ft. from side lot line such that side yards total 35.9 ft. Located at 1162 Kettle Pond La. on approx. 20,500 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 67.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Len Beech, 1162 Kettle Pond Lane, Great Falls, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of an addition to be located such that side yards would total 35.9 feet. A minimum combined side yards of 40 feet is required; therefore, a variance of 4.1 feet was requested.

Mr. Beech presented the variance request as outlined in the statement of justification submitted with the application. He explained that the proposed addition was one story on the side of the house. Mr. Beech said the topography to the rear of the house made it costly to build there. He stated that the addition would allow them to build reasonably sized rooms for use of work and a dining area.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 2003-DR-094 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEN W. BEECH, VC 2003-DR-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.9 ft. from side lot line such that side yards total 35.9 ft. Located at 1162 Kettle Pond La. on approx. 20,500 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 67. 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 5, 2003; 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 presents compliance with the required standards for a variance.
3. The lot is 100 feet wide.
4. There are topographical issues which prevent adding on to the right side of the house.
5. There is a hill and a drainfield to the rear of the structure.
6. The house will be in the building restriction lines with the addition.
7. The total minimum side yards are slightly impacted by the variance.
8. There is ample room between the subject property and the neighboring property.
9. There will not be significant negative impact on neighboring 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.

~ ~ ~ August 5, 2003, LEN W. BEECH, VC 2003-DR-094, continued from Page 694

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 A. Blevins, dated May 30, 2003, revised June 3, 2003, 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. Ribble moved to waive the 8-day waiting period. 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 August 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM MAHONEY, VC 2003-DR-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. and eave 6.4 ft. from side lot line. Located at 6328 Halsey Rd. on approx. 12,178 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 125.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Mahoney, 6328 Halsey Road, McLean, Virginia, replied it was.

Bill Sherman, Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit construction of an addition 7.4 feet with eaves 6.4 feet from the side lot line. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 7.6 and 5.6 feet, respectively, were requested.

Mr. Mahoney presented the variance request as outlined in the statement of justification submitted with the application. He explained that they had purchased the home three years prior and their family had grown since then. Mr. Mahoney said ingress and egress had become a risk for his wife and children. He stated the variance would provide security for his wife and children, storage space, and added living space. Mr. Mahoney said the property progressively narrowed on the left side, and there was no place on the property to build the addition without a variance. He stated that he loved the neighborhood and schools and did not

~ ~ ~ August 5, 2003, WILLIAM MAHONEY, VC 2003-DR-096, continued from Page 695

want to move.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 2003-DR-096 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM MAHONEY, VC 2003-DR-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. and eave 6.4 ft. from side lot line. Located at 6328 Halsey Rd. on approx. 12,178 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((6)) 125. 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 5, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the standards for a variance.
3. The lot is narrow and has converging lot lines toward 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:



~ ~ ~ August 5, 2003, WILLIAM MAHONEY, VC 2003-DR-096, continued from Page 696

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 22, 2003, 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 the height as depicted on the variance plat, the accessory structure labeled jungle gym shall be reduced in height or relocated so as to comply with all minimum required yards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 moved to waive the 8-day waiting period. 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 August 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:00 A.M.      ANDREW J. & INGRID K. NOVAK, VCA 79-D-304 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 79-D-304 to permit construction of additions 8.0 ft. and eave 6.0 ft. and 7.9 ft. and eave 5.9 ft. from side lot lines, roofed deck 7.9 ft. from side lot line and dwelling to remain 7.9 ft. and eave 5.9 ft. from side lot line. Located at 1855 Massachusetts Ave. on approx. 10,748 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) D.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Andrew Novak, 1855 Massachusetts Avenue, McLean, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance amendment to permit construction of a garage addition with a loft and a second-story addition over an existing dwelling, both to be located 8.0 feet with eaves 6.0 feet from the southwestern lot line. The application also included a request for a second-story addition over the existing dwelling on the other side lot line, with both one-story and two-story additions to be located 7.9 feet with eaves 5.9 feet from the northeastern side lot line. The applicant further requested a roofed deck 7.9 feet from the northeastern side lot line and to permit the existing dwelling to remain 7.9 feet with an eave 5.9 feet from the northeastern lot line. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, the following variances were requested: 7.0 feet for the garage addition, 6.0 feet for the garage eave, 7.1 feet for the additions and 6.1 feet for the eaves on the northeastern side lot line, 7.1 feet for the roofed deck and the existing dwelling, and 6.1 feet for the eave to remain on the northeastern side lot line.

Mr. Novak presented the variance amendment request as outlined in the statement of justification submitted with the application. He explained they had been homeowners and residents of McLean for seven years. Mr. Novak said it was their hope to remodel their house to be more in line with the surrounding homes and one that could meet their needs as an expanding family. He explained that they needed a variance because the existing property was granted a variance in January 1980 from the required 15-foot side yard setback to be built 8.0 feet from each side lot line. Mr. Novak said in granting the variance in 1980, the Board of Zoning Appeals recognized that the subject property was irregular in shape, both narrow and substandard in size. He said the plan submitted for the remodeling was the most efficient at preserving the integrity of the original variance granted in 1980, while maximizing privacy and backyard space. Mr. Novak said the plat showed the remodeling plans would maintain the existing setback of the home. He said the rear additions had been pulled back from Lot C 14.1 and 20 feet because there was no current landscaping or manmade barriers. Mr. Novak said on the side of the property near Lot E, there was mature landscaping and fencing that would be maintained and enhanced. He stated that hipped roofs were used to scale down the height of the second story additions and to lower their mass.

Mr. Novak stated that seven out of eight adjacent neighbors signed a letter stating they had no objection to the variance application. He said they approached the Franklin Park Citizen's Association for a meeting to review the variance application. Mr. Novak said the Association determined not to oppose the application and submitted a letter to the Board of Zoning Appeals. He explained there had been other similar variances approved in the surrounding area, some of which were more substantial than the requested variance. Mr. Novak said strict application of the minimum side yard setback would unreasonably restrict the remodeling of the home in a matter that would be similar to adjacent homes, would unreasonably restrict the use of the property, and would be arbitrary in light of the variance granted by the Board of Zoning Appeals for the existing home. He said the proposed remodeling would enhance the neighborhood.

Mr. Hart asked why the garage was oddly shaped. Mr. Novak said they did not want the garage doors to be the focal point of the house.

Mr. Hart asked if the garage was for two cars. Mr. Novak said it was.

Mr. Hart asked if the garage would work for two cars with the angled walls. Mr. Novak said that it would.

Mr. Hart asked how one would get from the driveway to the left side of the garage. Mr. Novak explained that the angle was not extensive.

Mr. Hart asked if they would be adding to the driveway. Mr. Novak said they would.

Mr. Hart noted there was a cap on the amount of driveway area and the front yard was not very big. Mr. Novak said there was runoff from the current driveway, and they were planning on using a porous material in creating the new driveway.

Mr. Hammack asked why the proposed addition of the second story in the rear could not be pulled back. Mr. Novak said the addition was already pulled in an additional 2.0 feet, but it was not shown on the plat.

Mr. Hammack asked if there were any other proposed changes to the plat. Mr. Novak said there were not.

Mr. Hammack asked if the house on Lot E was on a standard 56-foot lot. Mr. Novak said he was not sure, but the lot was larger than theirs.

Mr. Hammack asked how big Lot C was. Mr. Novak said Lot C was similar in size to his lot.

Mr. Hart noted that the second story addition looked like it continued the remaining length of the house. He asked where the one-story addition was located. Mr. Novak said the proposed one-story addition had cathedral ceilings.

Mr. Hart asked where the steps were. Mr. Novak indicated on the plat where they were located.

Mr. Hart asked Ms. Langdon if the location of the steps would be feasible. Ms. Langdon stated that steps could extend into the minimum required side yard 5.0 feet.

~ ~ ~ August 5, 2003, ANDREW J. & INGRID K. NOVAK, VCA 79-D-304, continued from Page 698

Mr. Hart asked Ms. Langdon if it was possible to have a one-story addition with cathedral ceilings. Ms. Langdon said it depended on how it was explained at building plan review. Ms. Langdon said the plat showed the addition being 21 feet high, and if they met the requirement, they would be all right.

Mr. Ribble asked the applicant if he had a new rendition of the plan to show where the addition had been moved 2.0 feet. Mr. Novak said they did not have a new rendition, they wanted to put the variance application together, and they would not be using 8.0 feet down the lot line.

Chairman DiGiulian called for speakers.

Gerald Fritz, 1850 Massachusetts Avenue, McLean, Virginia, came forward to speak in support of the application. He stated that after 12 years of a looking at an eyesore, he was delighted about the application. He said there would be no change to the current setback. Mr. Fritz said it would be unfair not to extend the current setback for the additions. He said the view of the home from the street would be what it was today. Mr. Fritz stated that there were some members of the Association that opposed any variances for side setbacks. He explained that the lots were narrow and the law provided variances on that basis. Mr. Fritz said extending the variance away from the street would not create an ominous or dangerous precedent or damage the neighborhood. He said the association members who opposed the variance did not speak for the neighborhood. Mr. Fritz said the affected neighbors were all in support of the variance. He noted the home would match the unique character of Franklin Park. Mr. Fritz said his property was the most affected by the current application, and the proposal would vastly improve the home and the character of the neighborhood.

Chairman DiGiulian noted that there was one letter in opposition to the application.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VCA 79-D-304 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW J. & INGRID K. NOVAK, VCA 79-D-304 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 79-D-304 to permit construction of additions 8.0 ft. and eave 6.0 ft. and 7.9 ft. and eave 5.9 ft. from side lot lines, roofed deck 7.9 ft. from side lot line and dwelling to remain 7.9 ft. and eave 5.9 ft. from side lot line. Located at 1855 Massachusetts Ave. on approx. 10,748 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) D. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 5, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The zoning of the lot is R-2.
3. The lot is 10,748 square feet.
4. The applicants have met the requirements 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 additions, a roofed deck and an existing dwelling, shown on the plat prepared by Bryant L. Robinson, dated April 23, 2003, 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. All additions shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval\* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 5-1. Mr. Ribble moved to waive the 8-day waiting period. 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 August 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY F. & EVELYNE M. WILLIS, SP 2003-MA-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 9.4 ft. from side lot line. Located at 3617 Hummer Rd. on approx. 22,726 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((3)) 1B. (Concurrent with VC 2003-MA-079). (moved from 7-15-03 and 9-9-03 per appl req.)

9:00 A.M. JEFFREY F. & EVELYNE M. WILLIS, VC 2003-MA-079 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 3617 Hummer Rd. on approx. 22,726 sq. ft. of land zoned R-3. Mason District. Approved Tax Map 60-3 ((3)) 1B. (Concurrent with SP 2003-MA-023). (moved from 7-15-03 and 9-9-03 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. Jeff Willis, 3617 Hummer Road, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request 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 shed to remain 9.4 feet from the northern side lot line. The applicants also requested a variance to permit construction of a detached garage to be located 4.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 8.0 feet for the garage and a modification of 2.6 feet or 22 percent for the shed were requested.

Mr. Hart asked if the garage that was approved was as large as the one on the application. Ms. Stanfield said she believed there was a copy of the plat in the staff report. She said she thought it was a smaller garage and that at the time of the previous approval, the garage was 22 by 30 feet.

Mr. Willis presented the variance request as outlined in the statement of justification submitted with the application. He explained that in May of 1994 they were granted a variance for 4.0 feet, but they decided to add an addition and wait on the garage. Mr. Willis said they were now asking for the garage to be 28 by 34 feet. He said the driveway narrowed near the house and widening it would put it in symmetry with the rest of the house. Mr. Willis stated that he would like to use part of the garage for storage, but did not have a problem with the length of the garage being reduced. He said the proposed garage would not change the character of the district and would be in harmony with the intent, spirit, and purpose of the Zoning Ordinance. Mr. Willis stated that the granting of the variance would not be contrary to public interest. He said his neighbors were aware of the application, and he noted that his neighbor sent in a letter in support of the application. He said the property had an exceptional shape because the house was on an incline.

Mr. Willis stated that the shed was built at the time the addition was built where a previous shed had once been. He said the noncompliance was done in good faith and the reduction would not impair the purpose or intent of the Zoning Ordinance. Mr. Willis said the shed would not be detrimental to the use and enjoyment of properties in the vicinity and would not create an unsafe condition or result in an increased density. He said tearing down the building would cause a hardship.

Mr. Pammel asked if the shed was frame or brick. Mr. Willis said the shed was not brick, but it had siding to make it appear that way.

Mr. Beard asked if there was electricity in the shed. Mr. Willis replied affirmatively.

Mr. Hammack asked where the house on Lot 1A was located. Mr. Willis said it was 60 feet to the right.

Mr. Hammack noted that on the photographs there was a walk leading to the shed, but on the plat there was a building. Mr. Willis said it was not a building, but was a half pipe.

Mr. Hart asked staff if the electricity in the shed needed a permit and electrical inspection. Ms. Stanfield said it would.

Mr. Hart asked if there was plumbing in the shed. Mr. Willis said there was not.

~ ~ ~ August 5, 2003, JEFFREY F. & EVELYNE M. WILLIS, SP 2003-MA-023 and VC 2003-MA-079, continued from Page 701

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2003-MA-023 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY F. & EVELYNE M. WILLIS, SP 2003-MA-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 9.4 ft. from side lot line. Located at 3617 Hummer Rd. on approx. 22,726 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((3)) 1B. (Concurrent with VC 2003-MA-079). (moved from 7-15-03 and 9-9-03 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 August 5, 2003; 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

~ ~ ~ August 5, 2003, JEFFREY F. & EVELYNE M. WILLIS, SP 2003-MA-023 and VC 2003-MA-079, continued from Page 702

development conditions:

1. This Special Permit is approved for the location of an accessory structure (frame shed) as shown on the plat prepared by Larry N. Scartz, dated January 7, 2003, submitted with this application and is not transferable to other land.
2. The applicant must obtain a building and electrical permit for the shed.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble moved to waive the 8-day waiting period. 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 August 5, 2003. 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 2003-MA-079 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY F. & EVELYNE M. WILLIS, VC 2003-MA-079 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 3617 Hummer Rd. on approx. 22,726 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((3)) 1B. (Concurrent with SP 2003-MA-023). (moved from 7-15-03 and 9-9-03 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 August 5, 2003; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have met the nine required standards for a variance.
3. There are topographical constraints that apply to the lot.
4. The applicant has discussed the variance with the neighbors and they do not object.
5. The Board previously granted a similar variance to the applicants that was not acted upon.
6. The character of the zoning district will not be changed by the granting of the variance.
7. The variance will not cause a detrimental impact on the adjacent property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;

~ ~ ~ August 5, 2003, JEFFREY F. & EVELYNE M. WILLIS, SP 2003-MA-023 and VC 2003-MA-079, continued from Page 703

- D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 detached garage, as shown on the plat prepared by Larry N. Scartz, dated January 7, 2003, 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. Ribble moved to waive the 8-day waiting period. 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 August 5, 2003. This date shall be deemed to be the final approval date of this variance.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:00 A.M. MARK A. LAWRENCE, SPA 89-D-051-2 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 89-D-051 previously approved for a home professional office to permit change in development conditions and to add land area. Located at 8612 Tebbs La. on approx. 7.28 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 48 and 52A. (moved from 7-22-03 per appl. req.)



~ ~ ~ August 5, 2003, MARK A. LAWRENCE, SPA 89-D-051-2, continued from Page 704

Mr. Hart made a disclosure that he was representing a lender and trustee in a case in Orange County and Frank McDermott, the applicant's agent, was representing the owner.

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 McDermott, agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, presented the request as contained in the staff report. The applicant requested a special permit amendment to continue an existing home professional office consisting of a psychiatric counseling office. There were no employees associated with the professional office. The applicant is the only practitioner. The home professional office utilized approximately 678 square feet of the dwelling. Changes in the development conditions from the previously approved application included extending the hours of operation from 8:00 a.m. to 7:00 p.m., instead of the previously approved 5:00 p.m., but limiting the total number of clients to 15 per week. Other changes included allowing a total of two clients onsite at any one time, where previously only one client was permitted onsite, and the deletion of conditions that required client parking only on Lot 8 and the term limitation. The current application also included an additional acre of land that was acquired by the applicant subsequent to the approval of SPA 89-D-051. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, staff recommended approval of SPA 89-D-051-2, subject to the proposed development conditions found in Appendix 1 of the staff report.

Mr. McDermott presented the variance request as outlined in the statement of justification submitted with the application. He explained that Dr. Lawrence had a special permit for the office since 1990 and his practice was an adult non-emergency, non-crisis oriented evaluation and consultation practice. Mr. McDermott referenced a letter from Jack and Amy Warren in support of the application, stating that they had been virtually unaware of the practice for years. He said the additional one acre was acquired from the Van Hollens prior to them selling their property. Mr. McDermott said a restrictive covenant was put over the property to maintain its current condition. He said Dr. Lawrence spoke to many of the neighbors, and they supported the renewal. Mr. McDermott stated that the property was 7.2 acres and naturally vegetated, with supplemental landscaping. He said the structure was a log cabin and the Lawrences had maintained a natural setting. Mr. McDermott said the setting was one of the reasons Mr. Lawrence practiced there.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 89-D-051-2 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK A. LAWRENCE, SPA 89-D-051-2 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 89-D-051 previously approved for a home professional office to permit change in development conditions and to add land area. Located at 8612 Tebbs La. on approx. 7.28 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 48 and 52A. (moved from 7-22-03 per appl. req.) 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 5, 2003; 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:

~ ~ ~ August 5, 2003, MARK A. LAWRENCE, SPA 89-D-051-2, continued from Page 705

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, 8612 Tebbs Lane (7.28 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 Huntley, Nyce and Associates, Ltd., dated May 3, 1989, as revised through May 5, 2003, 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. No sign shall be permitted for this use.
5. The maximum number of employees including the applicant shall be one (1).
6. The hours of operation shall be limited to 8:00 a.m. to 7:00 p.m., Monday through Friday.
7. The maximum number of client visits per week shall be limited to a total of fifteen (15).
8. The home professional office is to be limited to 678 square feet within the dwelling.
9. All parking shall be provided on-site, as shown on the special permit amendment plat.
10. The existing vegetation along all lot lines shall be maintained.
11. There shall be no group therapy sessions or training sessions on the site and no more than two clients shall be on-site at any one time.
12. There shall be no residential development of Lot 48 or other use permitted on Lot 48 during the term of the Special Permit.
13. The dwelling that contains the home professional office shall also be the primary residence of 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.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Ribble moved to waive the 8-day waiting period. 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 August 5, 2003. This date shall be deemed to be the final approval date of this special permit.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM J. MCGINNIS, A 2003-HM-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination by the Director of the Zoning Evaluation Division that the house, garage and deck as shown on the approved site plan meet setback requirements, and that the calculation of rear yard is in accordance with the definition of rear yard. Located at 1387 Cameron Heath Dr. on approx. 9,108 sq. ft. of land zoned PDH-3. Hunter Mill District. Tax Map 12-3 ((21)) 34.

Margaret Stehman, Deputy Zoning Administrator, Zoning Administration Division, presented staff's position as set forth in the staff report. The appeal was of a determination that the house, garage, and deck on the approved plans met the setbacks and calculation of the rear yard in accordance with the definition of a rear yard as set forth in Article 20 of the Zoning Ordinance. The lot was a corner lot zoned PDH-3 that had an area of 9,108 feet and was developed with a recently completed detached dwelling. In response to a request by the appellant, the Director of the Zoning Evaluation Division determined that the yard shown on the grading plan was in compliance with the minimum yard requirements for the Hunters End subdivision. At issue was the determination that required rear yard for Lot 34, a corner lot, was based on the definition of a rear yard. This definition provided that for a corner lot in the R-E through R-8 Districts, the rear yard may take the dimension of the side yard. Without this provision, corner lots would be required to be larger than the interior lots in a subdivision. This provision had been expanded to include the P Districts because they had the same characteristics relative to the yard sizes as the conventional districts. The negative effect was mitigated by allowing the rear yard to take on the characteristics of the side yard. The required yards for the Hunters End subdivision were a minimum required front yard of 10 feet, a minimum side yard of 4.0 feet with a combined total of 11 feet, and a rear yard of 15 feet. The required yards for Lot 34 were the required minimum fronts of 10 feet along each street frontage, a minimum side yard of 4.0 feet, and a minimum rear yard of 7.0 feet. It was staff's position that the yards in Lot 34 were in compliance with the approved yards.

Ms. Stehman explained that the rear yard was the yard opposite Pelham Manor Drive and was 7.0 feet. She said the side yard was 4.0 feet including the deck.

Mr. Hart asked why in a PDH-3 District was there the interpretation about the rear yard on the smaller side being the side yard measurement. Ms. Stehman said that when the question was raised, it had been customary for the last 20 years to apply the same definition from the R-E through the R-8 in the P Districts because the setbacks had the same characteristics. She said if you applied the two yards on street frontage, they were larger than the side yards.

Mr. Hart asked if there was a specific provision of the Zoning Ordinance that established why in a PDH-3 you could jump to something else. Ms. Stehman said in Article 16 there was a provision under the site plan for alterations to single-family, detached dwellings in the P District. She said you went to the most similar conventional R District.

Mr. Hart asked if under the R-3 District you would be able to change one rear yard into a side yard. Ms. Stehman said that was correct, provided the property was a corner lot.

William McGinnis presented the arguments forming the basis for the appeal. He said that, in his opinion, consumers often feel disadvantaged, but there are County regulations to protect them. Mr. McGinnis said he felt the builder and the County were stretching the rules and exceptions. He said the impact could affect future homebuyers. Mr. McGinnis stated that originally there was a requirement to have the rear yard be 26 feet. He said the County made a determination that they could reduce it by approximately 11 to 15 feet. Mr. McGinnis said the topography on the site was not very unique. He said there were 42 houses in the development, and 27 of them were walkouts. Mr. McGinnis said he felt this was an attempt for the builder to put larger houses on small lots. He said his lot was only 9,000 square feet and was one of the smaller lots in the development.

Mr. McGinnis said he notified the builder of his concern that the house did not meet zoning regulations. He said he received a response from the builder saying that his contract was never contingent on the size of the backyard. Mr. McGinnis noted that the letter from the builder's attorneys was dated November 5, but the builder did not get a permit until November 13. He stated that the builder proceeded to build the house in accordance with the minimum setbacks that were established in a determination by the Zoning Evaluation Division. Mr. McGinnis said there was no indication if anyone was aware that the house had a rear yard. He said the County and the builder missed the fact that it was a corner lot and had a requirement to have a rear yard and that the rear yard had to be 15 feet. Mr. McGinnis said they asked the builder to move the house

so that it faced the other street, making the rear yard larger. He said the builder did not respond.

Mr. McGinnis asked how the zoning district could be changed on a property. He said in the R-8 District, an affordable dwelling unit had a minimum required side yard of 8.0 feet and a rear yard of 20 feet. Mr. McGinnis said these were very expensive houses and it made no sense. He said he felt the builder was not aware of any requirement and the County had missed it.

Mr. Pammel asked how many square feet were in the dwelling. Mr. McGinnis said it was over 3,000 square feet, not including the basement.

Mr. Hart asked how the appellant would get around Section 16-403, Subsection 6. Mr. McGinnis stated he did not know enough about zoning to answer the question. He said he based his argument on his beliefs.

Chairman DiGiulian called for speakers. There were no speakers.

Ms. Stehman said the rear yard definition for the PDH-3 included the corner lot provision relative to the RE through R-8 Districts all being single-family, detached dwellings. She said the rezoning was approved in 1998, and the initial interpretation relative to yards was issued in March 1999. Ms. Stehman said there were three grading plans approved for the house, and the County had been consistent throughout development.

Mr. McGinnis stated that Section 16-403 talked about alterations to a single-family house. He said they wrote to the builder twice to consider rotating the house 180 degrees so they would have more room in the rear yard. He said they received no response.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He indicated the BZA had previously raised concerns regarding the practice of approvals of small lots, and particularly corner lots with double front yards, where builders have built large dwellings, which resulted in a high effective FAR even though there was no Floor Area Ratio for residential. He noted that staff had toured the Lorton Station area where the dwellings covered more than 50% of the lots, and with the addition of driveways and air-conditioners, no areas were left. Mr. Hart stated that he and Mr. Pammel had been to a meeting with senior staff and Planning Commission members the prior year regarding revisions to the residential development criteria and had been presented with a number of examples of what could go wrong in a P District by Susan Langdon, Chief, Special Permit and Variance Branch, and he said he hoped she would include the subject case for use as a future example of the approvals that led to unintentional or undesirable situations. Mr. Hart explained that it had been suggested at the meeting that the P District provisions of the Ordinance might be overhauled in the future, looking at things like usable yard area which were part of the residential criteria currently in a general sense but not specifically codified in P Districts where there was a tremendous amount of flexibility.

Mr. Hart said the point was that on an appeal, the BZA goes by what the Ordinance said, and based on the record in the subject case, the BZA had no basis to conclude that the Director of the Zoning Evaluation Division was incorrect in the determination made as to the subject house. He said he thought the appellant's problems with the builder were extraneous and the problems the appellant identified were inherent in some of the weaknesses of the current P District provisions as opposed to an incorrect reading of something. He said this was an issue the Board of Supervisors needed to fix, but on the narrow question of whether the Director of the Zoning Evaluation Division was correct in the particular interpretation regarding the subject case, if one followed the provisions in order, including Subsection 6 relating back to R Districts and the PDH-3 relating to an R-3, the result was correct. Mr. Hart said that although the result might be awkward for a big house on a tiny lot that did not end up with any backyard, that was what the Ordinance allowed; therefore, he stated that the Director of the Zoning Evaluation Division was correct.

Mr. Ribble and Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 5, 2003, (Tape 1), Scheduled case of:

9:30 A.M. PLUMBING DOCTOR, INC., A 2003-PR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a contractor's office and shop and is allowing two commercial vehicles to be parked on property in the R-4 District, in violation of Zoning Ordinance provisions. Located at 7118 Wade Pl. on approx. 9,724 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((5)) (4) 10.

Susan Epstein, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. This was an appeal of a determination that the appellant was operating a contractor's office and shop and was allowing two commercial vehicles to be parked on the property in the R-4 District in violation of the Zoning Ordinance provisions. The property was located at 7118 Wade Place, contained 9,724 square feet, and was developed as a single-family dwelling. As defined in the Zoning Ordinance, a contractor's office and shop was an establishment for the installation and servicing of such items as air-conditioners, electrical equipment, plumbing, and ventilating. Inspections of the property revealed that a contractor's office and shop was being operated from the property. During the inspection, staff observed employees reporting to the residence for their work assignments and the presence of two commercial vehicles advertising the Plumbing Doctor parked on the property and other commercial vehicles parked nearby. Inspections of the property conducted by the Zoning Enforcement Staff revealed that a contractor's office and shop were being operated from the property. A contractor's office and shop was not a permitted use in the R-4 District under any circumstances. Paragraph 5 of Section 2-302 of the Zoning Ordinance provided that no use shall be allowed in any district which is not permitted by the regulations of that district; therefore, the appellant was in violation of Paragraph 5 of Section 2-302 as a contractor's office and shop was not a use permitted by the regulations of the R-4 District. Paragraph 16-B of Section 10-102 allowed for the parking of only one commercial vehicle per dwelling in a residential district as an accessory use. As such, the parking of two commercial vehicles on the appellant's property constituted a violation of Paragraph 16-B of Section 10-102 of the Zoning Ordinance.

Mr. Hart asked if someone in an R-4 District setting up a desk with a telephone and dispatcher would be allowed. Ms. Stehman said if it was only dispatching and no one was coming to the residence, it could be allowed as a home occupation.

Mr. Hart asked if it would need a home occupation permit. Ms. Stehman said it would.

Mr. Hart asked if a home occupation permit could be obtained without a public hearing. Ms. Stehman said it would not need a public hearing. She said if it was a home professional office, it would require a public hearing. Ms. Stehman said there would be a number of conditions that would have to be agreed to.

Mr. Hart asked if the appellant had a home occupation permit. Ms. Epstein stated they did not.

Art Lander, the appellant's attorney, presented the arguments forming the basis for the appeal. He stated that they did have a home occupation permit. Mr. Lander said Mr. Bennet had an office in his home for about seven years. He said they previously did not have a permit, but recently obtained one. Mr. Lander said the current problem occurred because parking was banned on Rosemary Lane, and parking had spilled over to Wade Place. He said that one of the vehicles said to be a commercial vehicle was Mr. Bennet's personal vehicle. Mr. Lander stated that there were many other commercial vehicles parking on Wade Place that did not belong to the Plumbing Doctor. He said their mechanics parked their company vehicles at their own residences every night. Mr. Lander said the staff report referred to other company's vehicles. He stated the company's storage was offsite. Mr. Lander said the employees were dispatched from their homes, and at the end of the day, they went home. He said there had been no building on the property.

Chairman DiGiulian asked what an employee would do if they were finished with their work by 10:30 a.m. Mr. Lander said there was enough work for that not to happen.

Chairman DiGiulian asked Mr. Lander if the employees were assigned their work for the day at one time. Mr. Lander said they could get a call in the afternoon needing a mechanic, and the mechanic would be called on his cell phone.

Mr. Hart noted that during the April 12, 2003 inspection, three employees reported for work, and there were two commercial vehicles parked on the property. Mr. Hart asked if there were three employees and their vans on the property on April 12, 2003. Mr. Lander said occasionally an employee came by to drop off a ticket, but was only there for a brief time. He said there was confusion because there were so many other

contractors' trucks parked near the property for other businesses.

Mr. Hart asked if the mechanics had to drop off invoices at the end of the day. Mr. Lander said they did.

Mr. Hart asked if all the mechanics had to come to the office at the end of the day to drop off their tickets. Mr. Lander explained that they did not come at the same time.

Mr. Hart asked how many mechanics there were. Mr. Lander said there were four mechanics.

Mr. Hart asked how often the mechanics and the office had to interact on their paperwork. Mr. Lander stated that they had to interact once a day.

Mr. Hart asked if the employees had to come to the house to receive their paychecks. Mr. Lander said they did.

Mr. Hart asked where the employees received their supplies. Mr. Lander said they would go to a plumbing supply store.

Mr. Hart asked if the business owned any vehicles. Mr. Lander stated that they owned one van.

Mr. Hart asked Mr. Lander if the business owned the two Ford vans described in the staff report. Mr. Lander said he thought they were attributing to them vehicles that were not theirs. He said they had one commercial van and Mr. Bennet's personal vehicle.

Mr. Hart asked if Mr. Bennet's personal vehicle was used by any of the mechanics to make service calls. Mr. Lander said it was not.

Mr. Hart asked Mr. Lander if the mechanics owned their own vehicles. Mr. Lander stated that he was not sure.

Mr. Hart asked Mr. Bennet if the company owned the vehicles the mechanics used. Mr. Bennet said they owned all the vehicles the mechanics used.

Mr. Hart asked how many vehicles they owned. Mr. Bennet said they owned four vehicles.

Mr. Hart asked where the vehicles were at night. Mr. Bennet said the vehicles went home with the mechanics.

Mr. Hart asked how many mechanics there were. Mr. Bennet said there were four.

Mr. Hart asked if each mechanic came to the house sometime during the day. Mr. Bennet said that was correct.

Mr. Hart asked if there was any reason other than paperwork the mechanics would come to the house. Mr. Bennet said there was not. He said they could arrange it to where the mechanics never had to come to the house.

Mr. Hart noted that on April 12, 2003, three employees reported to work and there were two commercial Ford vehicles parked on the property. Mr. Hart asked the Mr. Bennet if his vehicles were Ford vans. Mr. Bennet said they were.

Mr. Hart asked if there was a reason three employees reported to work on April 12, 2003. Mr. Bennet said they reported to work at different times and on occasion two or three employees could show up at the same time.

Mr. Hart asked if they worked on Saturdays. Mr. Bennet said they did. He said they provided 24-hour service. He said they provided half day service on Saturdays at regular rates.

Mr. Hart asked if he called the company phone number, where would it ring. Mr. Bennet said it would ring

~ ~ ~ August 5, 2003, PLUMBING DOCTOR, INC., A 2003-PR-027, continued from Page 710

once at the house and then would switch to whoever was taking the calls at night, which was usually his daughter.

Mr. Hart asked where the number would ring if he called during the day. Mr. Bennet said it would ring at the house.

Mr. Hart said he would like to see the home occupation permit.

Mr. Bennet said he had been in the residence for many years. He said they had never had complaints. Mr. Bennet said the complaint happened after parking was forbidden on Rosemary Lane.

Mr. Beard asked Mr. Bennet what the carrying capacity of his personal van was. Mr. Bennet said he was not sure.

Mr. Beard asked Mr. Bennet what name his personal van was registered under. Mr. Bennet said he thought it was registered under his name. He said he was the owner of the company.

Mr. Beard asked Mr. Bennet if the mechanics' vans were lettered vehicles. Mr. Bennet said they were.

Mr. Beard asked Mr. Bennet if his personal van was the only one that was not lettered. Mr. Bennet stated that was correct.

Mr. Ribble asked Mr. Bennet if they had subcontractors. He stated they did not.

Paul McAdam, Inspector, Zoning Enforcement Branch, said the two vehicles he saw onsite were registered under the Plumbing Doctor. He said both vehicles had a rated carrying capacity of 10,500 pounds. He said that when they were empty, it was 5,204 pounds. Mr. McAdam said he talked to Ms. Bennet on April 11, and she agreed that her father was operating the Plumbing Doctor from this location. He said Ms. Bennet told him there were five commercial vehicles and two were parked onsite. He said, in addition, they had three employees who took vehicles home, and employees reported to this location for assignments on a daily basis at 7:30 a.m. He said he informed Ms. Bennet they needed to cease operating the plumbing business. Mr. McAdam said Ms. Bennet told him they had an office in Arlington, but they had moved and were looking for a new location. He said he had observed employees coming to the home in the morning, changing into work clothes, going into the house, and then leaving.

Mr. Hart asked staff if it was all right, with the home occupation permit, if mechanics were coming by for paperwork and paychecks. Ms. Stehman said once the employees were coming on a regular basis, it was beyond the home occupation permit. She said the permit allowed one nonresident employee between the hours of 8:00 a.m. and 5:00 p.m.

Mr. Beard asked Mr. McAdam if the two vehicles registered were both marked vehicles. Mr. McAdam said one vehicle was lettered and one was not. He said the unmarked vehicle had plumbing equipment inside. Mr. McAdam said the unmarked vehicle met the definition of a commercial vehicle.

Mr. Beard asked Mr. McAdam if it was a white van. Mr. McAdam stated that it was.

Chairman DiGiulian called for speakers.

Ursula Ermert, 7123 Wade Place, Falls Church, Virginia, came forward to speak. She explained that she was a block captain for the neighborhood watch program. Ms. Ermert said she had lived in the neighborhood for over 38 years. She said the Bennet family was a good neighbor, and she had used the plumbing business. Ms. Ermert said she was concerned with congestion in the neighborhood, safety, and appearance. She said neighbors had moved away because of the congestion. She stated that when employees came to pick up their work in the morning, there was no way of getting by the house without waiting or using great caution. Ms. Ermert said, in case of an emergency, immediate service of an ambulance or fire truck was impossible. She stated that recently a plow was not able to plow their street because of the congestion. Ms. Ermert explained that during the day trucks came and went with uniforms and supplies, which could endanger children. She said if a business was allowed in one home, it would have to be allowed in another.

~ ~ ~ August 5, 2003, PLUMBING DOCTOR, INC., A 2003-PR-027, continued from Page 710

Shirley Steffey, 7127 Wade Place, Falls Church, Virginia, came forward to speak. She said she agreed that the Plumbing Doctor was not the only problem in the neighborhood, but they added to the problem. Ms. Steffey said it was very difficult to get in and out of the neighborhood. She stated that it was a quiet neighborhood and she would like to see the property values increase and this would not add to the property value of the neighborhood.

Donald Close, 7124 Wade Place, Falls Church, Virginia, came forward to speak. He said the traffic in the neighborhood was worsening. Mr. Close said there was fear of children being injured.

Ms. Epstein said employees were coming to the property for their assignments, and even with a home occupation permit, that was not a permitted use within the limitations of the home occupation permit.

Mr. Lander stated, in his rebuttal, that other company vehicles parked in the neighborhood did not belong to people living there. He said the problem would not go away with the denial of the appeal.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to uphold the determination of the Zoning Administrator. He said based on the testimony and the arguments presented, he agreed with the determination of the Zoning Administrator that the appellant was operating a contractor's office and shop and was allowing two commercial vehicles to be parked on the property in an R-4 District in violation of Zoning Ordinance provisions. Mr. Beard seconded the motion.

Mr. Pammel noted that there was more than one employee, and although the employees would not be at the property the entire day, they were employees of the company and did arrive and depart from the premises on a daily basis. He said he thought that was clearly a violation of the Ordinance.

Mr. Hart indicated he would support the motion. He said it was apparent that other things were happening in the neighborhood besides the subject business and he hoped the County was being as consistent in the enforcement of other things occurring nearby as it was with the subject owner. He said he wondered why parking was banned on Rosemary Lane, but not on the courts, which pushed all of the parking off of one street and onto the next, and he suggested the neighbors explore that issue.

Mr. Beard indicated that he agreed with Mr. Hart's hope that the subject owner was not being singled out and that staff was looking into the existence of other problems.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0. Mr. Hammack was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 5, 2003, (Tape 1), After Agenda Item:

Approval of October 1, 2002; October 22, 2002; and November 12, 2002 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 5, 2003, (Tape 1), After Agenda Item:

Request for Reconsideration from Craig Kirby, VC 2003-DR-091.

Mr. Pammel moved to deny the request. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Ms. Gibb was absent from the meeting.

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--- August 5, 2003, (Tape 1), After Agenda Item:

Approval of July 29, 2003 Resolutions

Mr. Hart moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Ms. Gibb was absent from the meeting.

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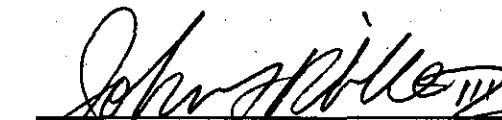
As there was no other business to come before the Board, the meeting was adjourned at 11:31 a.m.

Minutes by: Alison Capo

Approved on: November 2, 2004



Regina Thorn Corbett, Clerk  
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for  
John DiGiulian, Chairman  
Board of Zoning Appeals